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A HANDY BOOK
OF THE
PRACTICE
OF THE
LORD MAYOR'S COURT
BY
D. B. DALY.
BARRISTER AT LAW

5/-

Cw. U.K.



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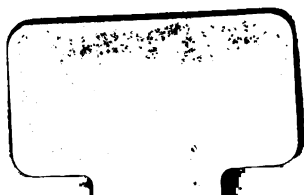
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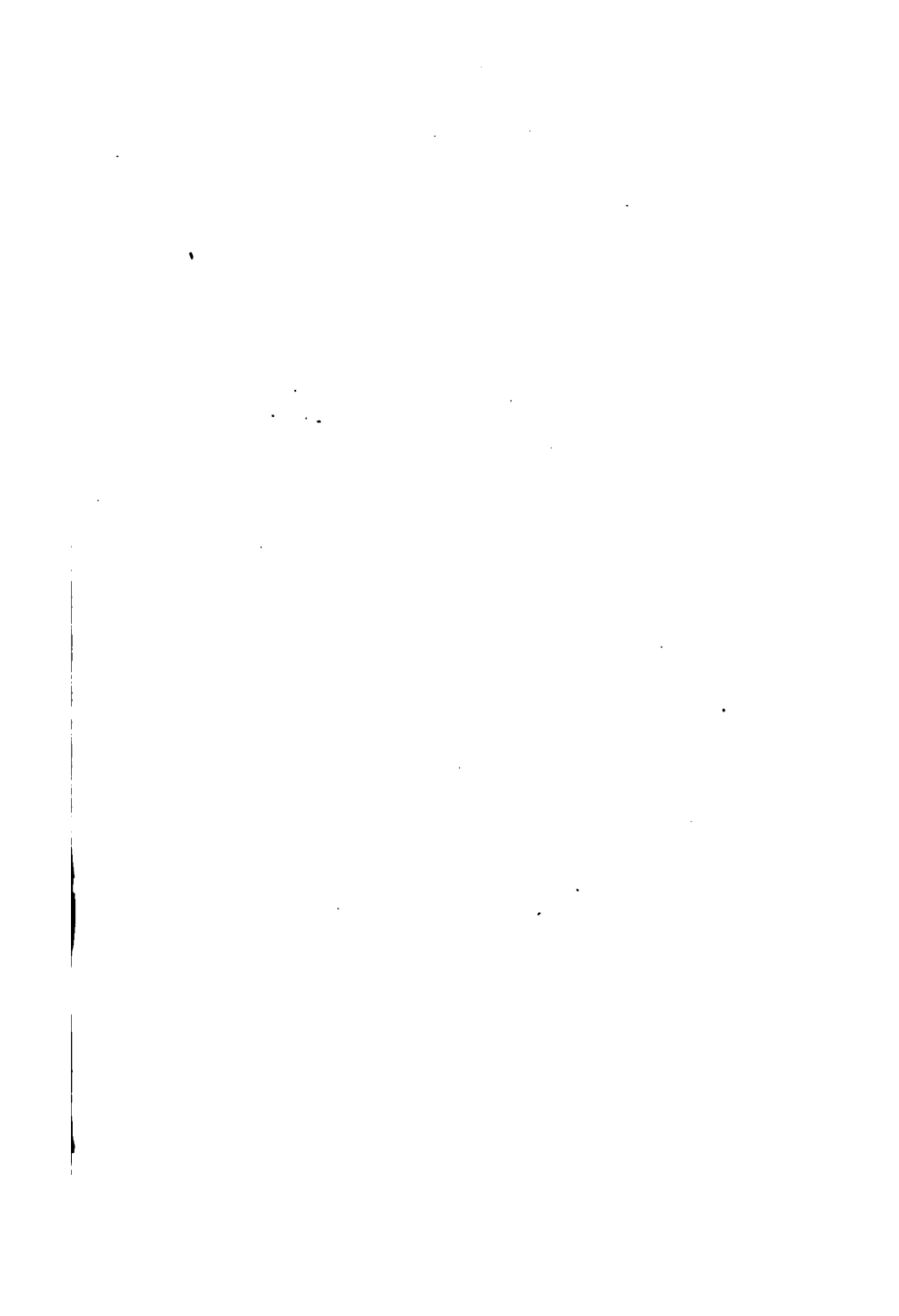
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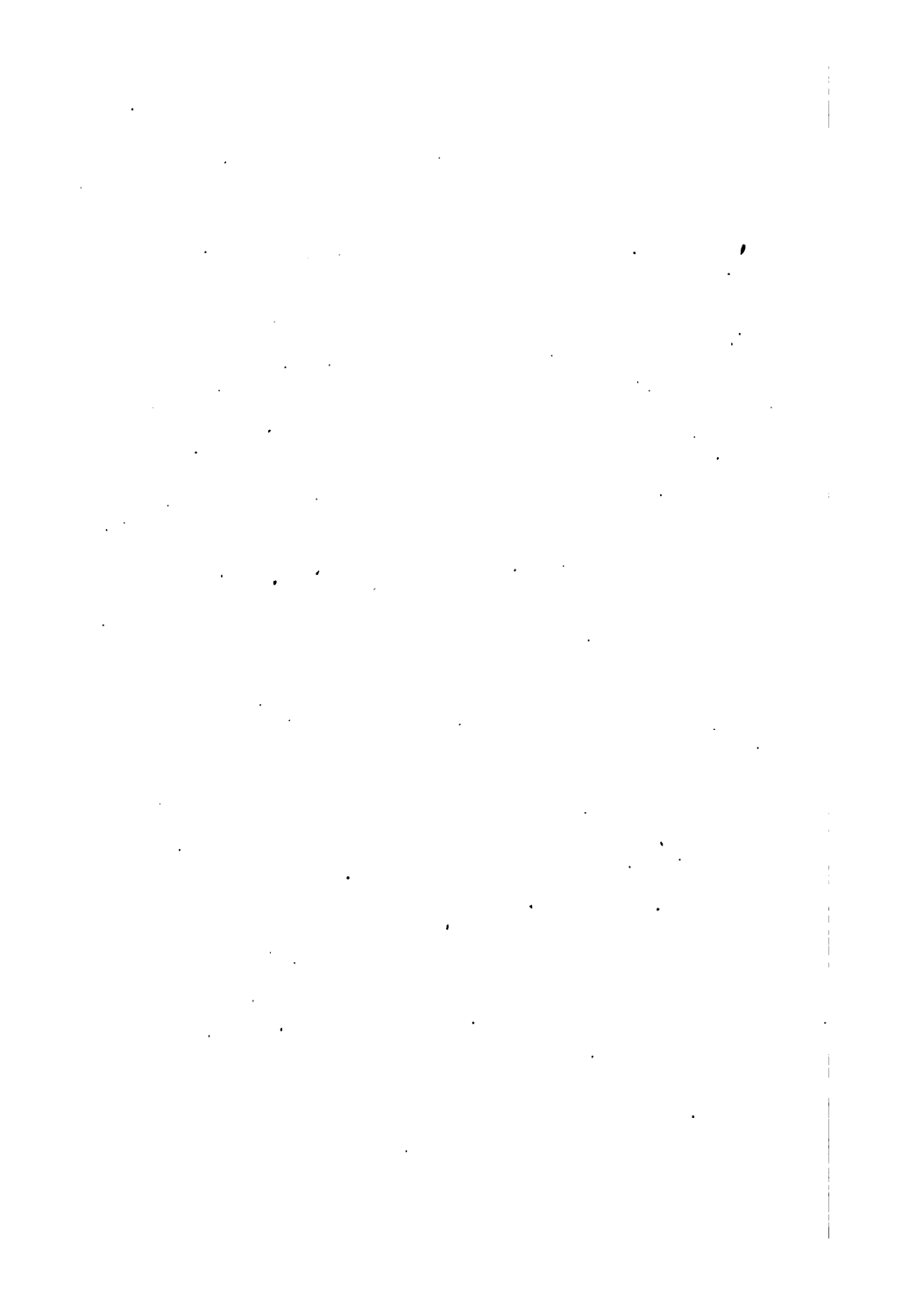
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HANDY BOOK
OF
THE PRACTICE
IN THE
LORD MAYOR'S COURT,
IN ORDINARY ACTIONS AND IN FOREIGN
ATTACHMENT,
UNDER THE NEW STATUTE AND RULES OF COURT.

WITH
AN APPENDIX OF THE MAYOR'S COURT OF LONDON
PROCEDURE ACT, 1857, AND SCALE OF COSTS.

BY
D. BINGHAM DALY, ESQ.,
BARRISTER-AT-LAW.

LONDON:
PUBLISHED BY WILLY AND SON, LINCOLN'S INN
ARCHWAY.

1861.



PREFACE.

THE Mayor's Court of London Procedure Act, 1857, and Rules of Court, have introduced many and most salutary changes in the practice and mode of pleading. That the cheap, expeditious, and satisfactory remedy now afforded to the suitor by this Court is fully appreciated by the profession and the public, is evident from the large amount of business.

Many practitioners are, however, unaware of the peculiar facilities offered by the Mayor's Court for the advantage of their clients, and others are now called upon to conduct causes therein who are unacquainted with its peculiar practice. No Treatise has been published for their guidance in ordinary actions, and embodying the new statute and rules. To such, therefore, the Author has ventured to offer a Handy Book of the practice. If it be found to supply the necessary information, his object will have been attained.

The law of Foreign Attachment has been already collected in "Brandon on Foreign Attachment," to which, in case of difficulty, reference may with advantage be had.

3, HARE COURT,
November, 1861.

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THE
PRACTICE OF THE MAYOR'S COURT.

CHAPTER I.

THE TITLE OF COURT.—A COURT OF RECORD.—JURISDICTION.—
SHERIFFS' COURT ABOLISHED BY STATUTE.—THE JUDGES.—ROUTINE OF BUSINESS.—OFFICERS OF THE COURT

THE Lord Mayor's Court, or the formal title, "The Court of our Sovereign Lady the Queen, holden before the Mayor and Aldermen of the City of London, in the outer-chamber of the Guildhall," is a Court of Record, and has by immemorial custom jurisdiction within the City as a court of law and equity. This jurisdiction is concurrent with the superior courts of law at Westminster in all personal actions (except replevin), whether for breach of contract or for tort, also in the mixed action of ejectment, provided the cause of action arose within the city or liberties of London. In inferior courts, existing by prescription, the cause of action must arise within the jurisdiction, and must be so alleged and proved. But besides entertaining the ordinary actions and suits at law and equity, the Lord Mayor's Court is a court of peculiar jurisdiction, in which many actions arising out of the local customs of the City of London, are by the laws and customs of England alone triable, particularly

A Court of
Record.

Jurisdiction.

actions upon certain bye-laws passed by the assembly of the Mayor, aldermen, and commonalty of the City imposing penalties for breach of their prescriptive customs, and which penalties can only be sued for in the Mayor's Court. The law of foreign attachment, and the peculiar practice relating thereto is secured to the citizens by prescriptive custom, confirmed by statute ; also sequestration, defamation, debt on *concessit solvere*. The court has likewise a criminal jurisdiction ; and upon information filed by the common sergeant, may inflict punishment upon freemen who may have offended against the laws or customs of the City, by adjudging that they be disfranchised. It also holds pleas upon penal actions arising out of acts of Common Council ; adjudicates between master and apprentice. So an action of covenant lies by the custom of London without specialty.* By the custom of London, as laid down in the *liber albus* in the town clerk's office, when a *feme covert* of a husband useth any craft in the said city, on her sole account, whereof the husband meddleth nothing, such a woman shall be charged as a *feme sole* concerning everything that toucheth the craft ; and if the husband and wife be impleaded, in such case the wife shall plead as a *feme sole* ; and if she is condemned, she shall be committed to prison till she has made satisfaction, and the husband and his goods shall not in such case be charged or impeached.† The husband is only named for conformity ; and if

* Pulling on Laws, &c., of Lond., 179.

† Lavie v. Phillips, 3 Burr., 1776 ; Pulling on Laws and Customs of Lond., 179.

judgment be given against them the execution will only go against the wife or her goods.* This mode of proceeding can only be adopted in the City courts, and cannot be removed out of them.†

The ancient writ *de rationabili parte bonorum* on behalf of the widow or children against the administrator of an intestate freeman, to obtain payment of their share of the deceased's effects—that is, after payment of the debts and allowing the widow's chamber, viz., her wearing apparel and the furniture of her chamber—to distribute the deceased's property according to the custom of London. If there are both wife and children, the wife takes a third, the latter a third, and the remainder goes to the administrator. If there be a wife and no children, or *e converso* the property is divided into two parts only, one going to the administrator and the other to the widow or children.‡ This custom does not apply when deceased disposes of his property by will. And the moiety or other portion thus coming to the administrator is again to be distributed under the statute of distributions, 1 Jac. 2, c. 17, s. 8: the next of kin thus taking in two ways—under the custom and under the statute.§ “The court also determines actions by informers, or ordered by the Court of Aldermen upon the presentments of the Wardmotes, inquests for penalties imposed by custom or acts of Common Council, upon non-free-

* Pulling on Laws and Customs of Lond. 179.

† Ibid.

‡ Pulling on Laws and Customs, &c., 180.

§ See Pulling on Customs of Lond., 180 (note).

men trading by retail within the City, freemen employing non-freemen, for infringement of the City laws, as to porters, carmen, and other fellowships or societies. The acts of Common Council, which impose these penalties, usually direct them to be sued for in the Lord Mayor's Court, in the name of the Chamberlain of London."*

On the equity side, the jurisdiction within its limits is concurrent with the Court of Chancery, bills for discovery, relief, or account ; for distribution of intestates' estate ; and its jurisdiction is exclusive in suits for the return of apprentice premiums. It will also relieve by injunction against proceedings on the law side of the court. Formerly, the practice was confined to a limited number of pleaders, but by a decision of the Court of Aldermen, the court has been thrown open to all barristers and all attorneys and solicitors of the superior courts at Westminster, who shall apply to be admitted as practitioners therein.

The Mayors' Court of London Procedure Act, 1857,† after reciting that it is expedient that certain functions and jurisdiction of the Sheriffs' Court be abolished, and that the Mayor's Court be made more efficient by extending its powers and simplifying its practice and mode of procedure, enacts that no action or suit for the recovery of any debt or demand shall be commenced in the Sheriffs' Court, either of the Poultry Compter or the Giltspur Street

No action or suit to be brought in the Sheriff's Court except in certain cases.

* Pulling's Laws and Customs of Lond., 187 ; 2 Rep. M. C., 128.

† The act is printed at length in the appendix, and references to it, in the subsequent parts of the work, will be by stating the section only.

Compter, save only and except pleas of personal actions under the provisions of the London (city) small debts act, 1852, which may continue to be brought, as heretofore, in the Sheriffs' Court, without being entitled as of either compter. The act contains exceptions in favour of writs of enquiry, and writs of trial, issued out of the superior courts of common law.

The Recorder of London for the time being is The Judges. the acting judge of the court. The Mayor and Aldermen are entitled to sit as judges with him if they please, they being the judges to whom all bills and petitions are formally addressed; and in the absence of the recorder, the common serjeant In case of illness or otherwise. for the time being of the City of London, may preside as judge in the Mayor's Court; and in case of the illness or unavoidable absence of either the recorder or common serjeant, they or either of them, or in case of their inability to make such appointment for the Mayor, Aldermen, and Commons of the City of London in common council assembled, to appoint some other person—being a person who shall have practised as a barrister for not less than seven years—to act as deputy during such illness or unavoidable absence. The recorder and common serjeant may also subject to the same condition; appoint a deputy to act for them in the court for any period not exceeding two months in one year. The officers of the court are the Registrar (whose The officers. duties are similar to the Registrar and Master of the superior courts), Deputy Registrar, Junior Deputy

Registrar, and Serjeant at Mace. The registrar of the court may, in the absence of the judge, hold the court, and transact all the business of the court, except the trial of issues in law or in fact. It is the custom of London that every month there shall be a new jury to try causes in the court. The names of the jurymen liable to serve are returned by the several wards in the city at their wardmote inquests every Christmas, by indenture under seal, to the town clerk, who enters them in a book and gives the officers of the Mayor's Court a copy. The parties so returned are summoned and serve as jurymen.†

Jurymen. By the sec. 49 of the above act, power is given to the court to fine defaulting jurymen to the extent of £5, to be levied in accordance with the provisions of 5 and 6 Will. 4, c. 76, s. 121. The court will, upon application, award a special jury of merchants.

CHAPTER II.

THE COMMENCEMENT OF THE ACTION.—NOTICE OF.—NAMES OF PARTIES.
 —THE PLAINT.—SERVICE OF PLAINT.—JUDGMENT BY DEFAULT.—
 PLEADINGS.—TRIAL.—EXECUTION.

ALL proceedings in the Lord Mayor's Court are commenced by plaint or bill original without writ, which, however, is never in practice recorded until a subsequent stage.

The actual commencement of a suit is by entering in the court book at the office of the court the names of the parties in the following form for an action on contract:—

† Bohun Lond., priv. 290.

In the Mayor's Court, London.

Entry of
Action.

day of

186

A. B., Defendant,

at the suit of

C. D., Plaintiff.

in a Plea of *debt upon demand of £* of *lawful money of*
Great Britain.

E. F., Plaintiff's Attorney,
of |

At the same time this is entered a copy must be prepared by the plaintiff's attorney with a notice of action and short statement of the claim for debt and costs, which must be sealed in the office of the court and served upon the defendant with a notice thereunder in the following form:—

In the Mayor's Court, London.

day of

186

Notice of
Action.

A. B., Defendant,

at the suit of

C. D., Plaintiff,

in a plea of *debt upon demand of £** of *lawful money of*
Great Britain (or as case may be).

Plaintiff's Attorney.

of

TAKE NOTICE that the above Action has been commenced against you, and unless you appear thereto within Eight Days from the service hereof, judgment will be issued against you by default.

The Plaintiff claims the sum of £† for money payable by the Defendant to the Plaintiff for goods sold and delivered and upon accounts stated (or as case may be), and £ for Costs; and if the same be paid to me within Eight Days from the service hereof, all further proceedings will be stayed.

Yours, &c.

E. F., Plaintiff's Attorney,

of

To Mr.

the above-named Defendant.

* This must correspond with the above form. This amount is nominal and it is usual to insert a larger sum than the actual debt to cover supposed damages.

† The actual debt.

In practice the above two forms are handed in to the officer together who will insert the amount of costs according to the amount of the demand; and the second is returned with the seal of the Court; and for convenience the attorney should keep a copy of it for reference. Care must be taken to have the form correctly filled up, as in the event of any omission should the defendant apply to the Court thereon, the plaintiff would in all probability be made to pay the costs of such application.

The notice must bear date the day the same shall be issued.

Names of parties.

The plaint must be directed to the defendant himself, and should set forth the christian and surname in full; and he may be sued by any name or names he may have acquired by usage or reputation: ~~this~~ applies to christian as well as surname.* If the defendant entered into the contract which is the subject of the action in the name by which he is sued it is all that is required.† If defendant have a name of dignity, he should be described by that name.

Of the Defendant.

Of Plaintiff.

The plaintiff should be correctly described by his christian and surname in like manner.

It is not necessary in the preliminary proceeding to describe the plaintiff as suing, or the defendant as sued in *autre droit*, as executor, administrator, &c.

The names of all the parties, where several persons sue or are sued jointly, should be inserted.

The action must be described correctly according to its designation.

* *Williams v. Bryant*, 5 M. & W., 447.

† *Walker v. Willoughby*, 6 Taunt., 580.

It would appear that the notice of action or summons may be served personally at any time and at any place in the City ; and that an action commenced in the Mayor's Court remains in force for ever, although no proceedings had thereupon.* The notice, under the seal of the court must be served. If the defendant cannot be found, to effect personal service, the person employed to serve should make diligent inquiries ; and if he has reason to suspect that the defendant intentionally keeps out of the way, and for the purpose of avoiding service, take the same course, and make the same affidavit directed by the Common Law Procedure Act.

Service.

With this variance in practice : that upon lodging the affidavit at the court office, the serjeant at mace, or one of his officers, will attempt service and make his return ; whereupon the registrar will make an order for judgment after a proper time for appearance has elapsed.

The Court may, in any case where it shall satisfactorily appear by affidavit that the cause of action arose within the jurisdiction of the court, order that the plaint may be served in any part of England or Wales ; and the service of any plaint in pursuance of such order shall be as valid and effective as if the same had been served within the jurisdiction of the court : provided that a copy of such order shall be served at the time of the service of the plaint ; and in all cases where such order shall be made, the proceedings in the cause shall be the same as if the de-

Service out
of jurisdiction.

* Pulling's Customs, &c., 193.

fendant had been duly served with the plaint within the jurisdiction. (See secs. 13 and 14.) The form of affidavit to enable the plaintiff to obtain this order (as well as all other forms to be used in the court) may be had at the Mayor's Court office in Guildhall-yard.

The defendant has the right to have the costs taxed if he pay the demand within the eight days.

The defendant, upon being served with the copy of action or summons, has eight days to appear. These days are not reckoned as in proceedings in the superior courts; defendant is not bound to appear before the eighth day after service, exclusive of day of service. If he appears he must enter such appearance in the office by *præcipe* in the following form:—

In the Mayor's Court, London.

	_____	Plaintiff.
	_____	Defendant.
Action entered	day of	18
Appearance of defendant	day of	18
		G. H.,
		Defendant's Attorney.
		(Address.)

Notice of this appearance, under the seal of the court, must be given to the plaintiff's attorney, and if the defendant's attorney does not give such notice, so sealed, although an appearance be entered, the plaintiff's attorney may treat it as a nullity, and sign judgment against the defendant; and the defendant will have to apply to the registrar of the court by written notice, to set aside the judgment; and if the application be granted, it will be upon an affidavit of merits and upon payment of costs.

A B
against
C D

To Mr. —————
Plaintiff's attorney.

G. H.
Defendant's attorney.

If the defendant does not appear at the expiration of the eight days after service, the plaintiff may, on the morning of the ninth, sign judgment. For this purpose an affidavit of service must be filed in the office, and judgment must be prepared on parchment, a printed form of which may be had at the court office. The following is the form of affidavit of service :—

Plaintiff.
Defendant.

I _____ of _____
in the _____ of _____
make Oath and say that I did, on the _____ day of _____
within the jurisdiction of this court (or if
*served out of the jurisdiction, under sec. 13, Mayor's Court of
London, Procedure Act, state that fact*) personally serve the
above-named defendant with a true copy of an action entered
against him in this honourable court, sealed with the seal of the
said court, at the suit of the above-named plaintiff; and I further

say that at the foot thereof there was a note, addressed to the said defendant, in the form directed by this honourable court.

Sworn at the Mayor's Court
Office, in the City of London,* }
this day of }
 18 , }
before me,

Upon signing judgment in default of appearance, plaintiff must file common bail and a præcipe for judgment, both of which forms are supplied at the court office.

FORM OF FILING COMMON BAIL.

In the Mayor's Court, London.

Common Bail, according to the statute for

_____ Defendant.
_____ Plaintiff.

At the suit of

Entered day of 186

A. B., Plaintiff's Attorney,
of, &c.

FORM OF PRÆCIPE FOR JUDGMENT.

In the Mayor's Court, London.

_____ Plaintiff.
_____ Defendant.

Action entered day of 186

Judgment by default day of 186

Debt, £ costs, £

A. B., Plaintiff's Attorney.
of, &c.

The judgment is printed upon parchment, and is, in fact, in form of a common Declaration.

* If service made in the country, the person so serving may make his affidavit before a commissioner for administering oaths in the courts of common law at Westminster.

The officer of the court marks on the judgment by default the amount of costs to be allowed, at the time of signing it.

In tort, the judgment is interlocutory, subject to inquiry as to damages.*

The following are the words of the judgment of the court, but they need not actually be entered, unless further proceedings are to be had upon the judgment :—

“ Because the said defendant hath not appeared to the bill original, as aforesaid, therefore it is considered by the Court that the said plaintiff recover against the said defendant his debt aforesaid, and also the sum of £ , adjudged by the said Court to the said plaintiff for his costs and charges by him about his suit in this behalf expended ; and the said defendant, in mercy, &c.

Entry of judgment for want of appearance.

—— Registrar or Deputy-Registrar.

WHEN DEFENDANT APPEARS.

Upon the appearance of the defendant, plaintiff may declare, even before the expiration of the eight days allowed, if there be no injunction or order to stay the proceedings. The Declaration is not limited to any prescribed form, but the practice is to adhere to the forms and rules of pleading in use prior to the passing of the Mayor's Court Procedure Act, and the Common Law Procedure Acts. The form almost universally adopted, and particularly recommended, is the customary count in debt ; and it is applicable in all actions for liquidated demands, when a granting and agreeing to pay can legally exist between the parties, its form is as follows, and

Declaration.

Customary Count.

* See post trial.

it is published at the Court office. The warrants of attorney should, however, be written in the margin, as below :—

In the Mayor's Court, London,

The day of (*the day*)
and year of entering the ac-
tion), the plaintiff appoints in
his stead E. F. his attorney. }

A. B., by E. F., his attorney, demands against C. D. £* of lawful money of Great Britain, which he owes to and unjustly detains from the said plaintiff; For that whereas the said defendant on the† day of in the year of the reign of her present Majesty Queen Victoria, at the parish of St. Helen, London, and within the jurisdiction of this Court, for and in consideration of divers sums of money before that time due and owing from the said defendant to the said plaintiff, at the parish aforesaid, and within the jurisdiction aforesaid, and then being in arrear and unpaid, granted and agreed to pay to the said plaintiff the sum of £ above demanded, where and when he the said defendant should be thereunto afterwards required; yet notwithstanding the said defendant, although often thereto requested, hath not‡ (*nor hath either of them*) yet paid to the said plaintiff (*or either of them*) the said sum of £ above demanded, or any part thereof, to the damage of the said plaintiff twenty shillings; and therefore he brings his suit, &c.

day of § 18

The day of (*the day appearance was entered*), the defendant appears and appoints in his stead C. D., his attorney, and hath leave to imparle until, &c.

The above count may be joined with other counts in assumpsit or debt.

After the declaration has been prepared it is de-

* As in action entered.

† Some day before the action was entered.

‡ If more than one defendant or plaintiff, add words in italics.

§ Date of action entered.

livered to the defendant's attorney, with or without a demand of plea. The demand of a plea is necessary before plaintiff can sign judgment for want of a plea, and may be made after declaration delivered, or as the demand cannot be made until after two clear days from the entry of appearance, the more usual course is to defer the delivery of declaration until the third day after appearance, and to accompany it with a demand of plea.

The defendant has four clear days after demand of plea to plead; and if he does not plead within the four days, plaintiff may sign judgment.

If the defendant have appeared, and the plaintiff does not, on the ninth day after the service, deliver a copy of his declaration to the defendant's attorney, the defendant's attorney may demand the same, and if the plaintiff's attorney does not deliver such copy within four days after demand, not having obtained further time, the defendant's attorney may sign judgment in the following form for want of prosecution :—

Before, &c.,
 Puts in his place his attorney at the suit of
 in a plea whereas an action was entered against the defendant at the
 suit of the said on the day of and
 whereas the said appeared thereto, and whereas the said
 hath not prosecuted his suit with effect, therefore it is
 considered by the Court, &c.

Judgment
 for want of
 prosecution.

A docquet will be necessary on signing the judgment, as in other cases describing the default as "for want of prosecution." The objection to the jurisdiction must be by plea; and moreover, when the debt

When debt does not exceed £50, no plea to jurisdiction allowed in certain cases.

or damage claimed in any action does not exceed the sum of fifty pounds no plea to the jurisdiction shall be allowed provided the defendant or one of the defendants shall dwell or carry on business in the City of London or the liberties thereof at the time of the action brought, or provided the defendant, or one of the defendants, shall have dwelt or carried on business at some time within six months next before the time of the action brought, or if the cause of action, either wholly or in part, arose therein. (Sec. 12.)

If the defendant plead, all forms of plea are open to him that were in use prior to the Common Law Procedure Acts, and in this Court no leave is now necessary to plead several matters.* Strictly speaking, there still exist the old forms of pleading, as found in Chitty, Tidd, Pearson, &c., but if the defendant plead according to the Common Law Procedure Act, and the plaintiff is dissatisfied at the omission of the useless verbiage, he must demur. This course, where the objection is merely to form, will not be encouraged by the Court.

All interlocutory orders, as for time to deliver declaration, to plead or reply, for particulars, &c., are obtained by notices. If the practitioner require particulars, &c., he should take care to give notice to plaintiff's attorney in sufficient time before the time for pleading will expire. The following form may be used for that or any other application, *mutatis mutandis* :—

* By Rule of Court, March 2nd, 1861.

In the Mayor's Court, London.

Between A. B., Plaintiff,
and
C. D., Defendant,

Take notice, that I shall attend the Registrar of this Court, at the office of the said Court, on the day of instant, at the hour of [*some time between the hours of twelve and two*], for an order that the plaintiff in this action or his attorney do deliver to me, as the attorney for the defendant, full particulars of the plaintiff's claim for which this action is brought, with dates and items; and that in the meantime all proceedings in this action be stayed.

Dated, &c.

Yours, &c.,

To Mr. G. H., of —

E. F.

Plaintiff's Attorney.

of —, Defendant's Attorney.

Serve this notice one day, for the next, before seven o'clock in the evening. Take care to be at the office by the time appointed; stay in attendance fifteen minutes at least. If the opponent attends, or neglects to attend, then, at the expiration of the fifteen minutes, go before the registrar, and apply for your order, which, if it be reasonable, will be granted, and very likely two or three more days to plead after the delivery, according to circumstances. If your time for pleading will expire on the day of the attendance of the above notice, serve another notice, to be attended at the same time, for time to plead: the one notice may aid the other, and this is desirable with a sharp opponent.

Consents are given, and orders thereupon granted, as in the superior courts, upon summons, the words "*by consent*" being inserted in the order. Counsel's signature is not necessary to any pleading. By the rules published by the Court, and in force after 1st

January, 1850, the plea of "*never was indebted*" shall be used in the said court to the customary count *sur concessit solvere*, and will operate as a denial of those matters of fact from which the liability of the defendant arises: *exempli gratia*, in actions for goods bargained and sold, or sold and delivered, the plea will operate as a denial of the bargain and sale, or sale and delivery, in point of fact. In the like action for money had and received, it will operate as a denial both of the receipt of the money and the existence of those facts which make such receipt by the defendant a receipt to the use of the plaintiff; and on Bills of Exchange and promissory notes, the drawing, making, or endorsing and accepting; but if the defence be for other matters, as not presenting or not giving notice of the dishonour, or no consideration, notice thereof must be given of such defence with the plea; but such defence as bankruptcy or the Statute of Limitations, &c., must be pleaded.

It will be observed by the foregoing rule that the plea of "never indebted" is admissible to counts upon Bills of Exchange and Promissory notes, and puts in issue the drawing, making, or endorsing or accepting; with these exceptions, notice of all other defences must be given to the plaintiff with the plea.

The defendant may pay into court as much as he considers the plaintiff is entitled to recover, and plead payment into court. Take the pleas to the office of the court, and the proper officer will, upon receipt of the money, note it in the margin.

The defendant's attorney may, before trial, dis-

cover the necessity for an additional plea. If that be so, and there is reasonable time, the registrar may be applied to by notice, as in the case of time to plead, and if the registrar thinks proper to let in the defendant, he will do so upon terms of payment of costs, short notice of trial, or other condition he may think reasonable, and the judge at the trial will exercise his power in his discretion. But when the facts are complicated, or the law applicable thereto is uncertain, and the pleadings are intricate, the assistance of counsel should be resorted to, to prepare the pleadings and advise upon the evidence.

The defendant must deliver a copy of the plea or pleas to plaintiff's attorney, who should thereupon engross it, or them, upon the record, and add the joinder of issue, giving notice thereof to the defendant.

In case of a replication by the plaintiff, or any subsequent pleading, the defendant may join issue, giving the plaintiff notice thereof, as—

The defendant joins issue on the plaintiff's replication (*or as the case may be*). Joinder of issue.

In making up the record at the conclusion of the pleadings, add the words—

"Therefore let a jury come," &c.*

If the plaintiff do not reply to the plea of the defendant the defendant may demand a replication of the plaintiff, and if he do not deliver such replication within four days after demand, not having

* The form of record on parchment may be obtained at the court office.

obtained further time to reply, the defendant may sign judgment for want of prosecution.

If the plaintiff do not join issue upon the record by adding the *similiter* and give notice thereof to the defendant the defendant may demand such joinder of issue of the plaintiff, and if the plaintiff do not so join issue as above and give notice of his having so done to the defendant within four days after such demand the defendant may sign judgment for want of prosecution.

Upon the cause being at issue the plaintiff's attorney hands in the record at the court office two days before the court day,

FORM OF ENTRY OF CAUSE FOR TRIAL.

In the Mayor's Court, London.

A. B. versus C. D.

Action entered	day of	18
Notice of trial for the	day of	18
		Plaintiff's Attorney.
		Address.

and must thereupon give to defendant not less than eight or more than twelve days' notice of trial.

In the Mayor's Court, London.

Between

Plaintiff,
Defendant.

TAKE NOTICE of trial* in this cause for the sitting of this Honourable Court to be holden at the Guildhall of the City of London on the day of 18 at half-past ten of the clock of the forenoon precisely,
To

Yours, &c.

Plaintiff's Attorney.
Address.

Defendant's Attorney.

* In case of judgment by default, notice must be given, inserting "of inquiry for assessment of damages" instead of "trial."

The subpoenas are to be issued by the respective attorneys, and must be sealed at the office of the court, and may be issued immediately after the cause is at issue, the form for which prepared, and all the necessary copies may be obtained at the office of the Court.

In any action or other legal proceeding in the court the Court may on application made for such purpose by either party, compel the opposite party to allow the party making the application to inspect all documents in the custody or power or under the control of such opposite party relating to such action or other legal proceeding, and if necessary to take examined copies of the same or to procure the same to be duly stamped, in all cases in which a discovery might have been obtained by filing a bill or by any other proceeding in a court of equity at the instance of the party so making application to the court. (Sec. 21.)

Power of Court to compel parties to allow inspection of documents and copies to be taken,

The plaintiff must within two days exclusive of the day of trial lodge the record in the office of the court endorsed with the day for which notice of trial is given.

Plaintiff to lodge record.

The plaintiff may countermand his notice of trial any day not within three days of the day of trial exclusive of the day of trial.

Countermand.

The parties in any cause may, by consent in writing, signed by them or by their respective attorneys, leave the decision of any issue of fact to the Court, provided that the Court shall, in their or his discretion, think fit to allow such trial; and such issue of fact may thereupon be tried and determined, and damages

Judge may, by consent, try questions of fact.

awarded where necessary, in open court by the judge, who might otherwise have presided at the trial thereof by jury ; and the verdict of such judge shall be of the same effect as the verdict of a jury, save that it shall not be questioned upon the ground of being against the weight of evidence, and the proceedings upon and after such trial as to the power of the Court to judge the evidence, and otherwise, shall be the same as in the case of trial by jury. (Sec. 51.)

**Trial by
proviso.**

If the plaintiff do not enter the cause for trial within ten days after the same is at issue, the defendant may do so, and give notice of trial to the plaintiff's attorney, and proceed to try by proviso, leaving with the registrar a record, two days before the day of trial, endorsed with the day of trial.

**If the plain-
tiff counter-
mand.**

If the plaintiff countermand his notice of trial, the defendant may, after four days from the countermand, himself give notice of trial to the plaintiff's attorney, and proceed to trial as before.

All trials in this court are by jury, with counsel, and are conducted as to rules of evidence in the same manner as in the courts at Westminster.

The speeches of counsel are regulated in accordance with the rules in force prior to the Common Law Procedure Acts.

Upon the trial of the cause, in ordinary cases, one counsel only will be allowed ; but the plaintiff or defendant's attorney must exercise his discretion as to what cases are "special cases" within the rule, that in such cases more than one counsel will be allowed. By section 23, the Court has ample powers of amend-

ment of all defects and errors for the purpose of determining the real question in controversy between the parties ; and application for such amendments are made and conducted in the mode already pointed out with reference to applications for time to plead, &c. : of course, with the exception of any amendment made by the judge at the trial.

By the 24th section of the Act, the Court is empowered in any action, upon the application of any of the parties thereto, to order the examination on oath, upon interrogatories or otherwise, of any witness or witnesses in any part of *England* and *Wales*, and give all such directions as may appear reasonable and just ; and by section 25, 26, 27, 28, 29, and 30 ample powers are given to the Court to make orders and give directions for compelling the attendance of witnesses for payment of expenses, issuing commissions to examine witnesses abroad, and for other purposes, to promote the ends of justice, which are not repeated here because the whole of the Act itself will be found printed in the Appendix.

Deposition of witnesses may be taken.

Compelling attendances of witnesses or production of documents.

The costs of every rule or order to be made for the examination of witnesses, by virtue of the provisions herein contained, and of the proceedings thereupon, shall be costs in the cause, unless otherwise directed, either by the judge of the superior court making such order, or by the court. (Sec. 30.)

Costs of order and proceedings.

It is also provided by the same act, that no examination or deposition, to be taken by virtue of the provisions herein contained, shall be read in evidence without the consent of the party against

Restrictions as to reading depositions.

whom the same may be offered, unless it shall appear to the satisfaction of the court that the examinant or deponent is not in England or Wales, or is dead, or unable from permanent sickness, or other permanent infirmity, to attend the trial, in all or any of which cases the examinations and depositions certified under the hand of the commissioner, registrar, or other person taking the same, shall and may, without proof of the signature to such certificate, be received and read in evidence, saving all just exceptions. (Sec. 31.)

If the plaintiff succeed in obtaining a verdict, the record will be delivered to him, and, thereupon, he must make an entry of the postea on the record in the following form:—

**Form of
postea.**

Afterwards

on the day of

A.D., 186. , before Russell Gurney, Esq.,

recorder of the said city, come the parties above mentioned by their respective attorneys above mentioned, and a jury of the said city being summoned also come, who being sworn to try the issue above, joined between the said parties upon their oath, say that the said defendant oweth to the said plaintiff the said sum of £

above demanded (or £ parcel, &c., as the case may be)

in manner and form as the said plaintiff hath above declared against him; and they assess the damages of the said plaintiff on occasion of the premises above complained of by him over and above his costs of suit to £ and for those costs and charges to

£ . Therefore, &c.

At the end of four days after trial the plaintiff is entitled to judgment, unless the judge immediately after the trial shall otherwise order:

Entry of judgment.

One day's notice of taxation of costs is requisite, and the judgment may be entered up as follows, in

case such entry should become necessary for bringing error or otherwise, but in practice for taxing costs and obtaining execution, the entry of the *postea* is sufficient :—

Therefore it is considered by the Court that the aforesaid plaintiff recover against the said defendant his said debt and the damages aforesaid, by the jury aforesaid, in form aforesaid, found, and also the further sum of £ for his costs and charges, adjudged to the said plaintiff, with his assent, which said debt damages, and costs in the whole amount to £ ; and the said defendant, in mercy, &c.

A docquet of which judgment must be filed in the office of the court in the following form :—

In the Mayor's Court, London.

			Plaintiff.
			Defendant.
Action entered	day of	18	
Judgment on verdict	day of	18	
Debt £	Costs £		
			Plaintiff's Attorney.
			Address.

Upon which execution may issue in the following form upon filing a *præcipe* :—

FORMS OF EXECUTION IN MAYOR'S COURT.

If the verdict pass for the defendant, the following is the form of *postea* to be entered on the record by him before signing judgment :—

That the said defendant doth not owe to the said plaintiff the said sum of £ above demanded or any part thereof, in manner and form as the said plaintiff hath above declared against him: therefore it is considered by the Court that the aforesaid plaintiff take nothing by his bill original aforesaid, and that the defendant go acquitted thereof, without a day, &c.; and also that

Entry of verdict for defendant.

the said defendant recover against the said plaintiff £ for
his costs and charges expended in the defence of the suit, according
to the form of the statute in such case made and provided; and
that the said defendant have execution thereof, &c.

FORMS OF EXECUTION.

To CHRISTOPHER FITCH, *Serjeant at Mace,* } By the Mayor, &c.
&c., or to any other *Serjeant at Mace,* &c.

LEVY on the Goods and Chattels of
within the Liberties of the City of London, as well a certain debt
of which lately
in the Queen's Majesty's Court holden before us the said Mayor and
Aldermen in the Chamber of the Guildhall of the said City recovered
against as also
which in the said Queen's Majesty's Court holden before us the said
Mayor and Aldermen in the Chamber of the Guildhall of the said
City were adjudged to the said for
damages sustained, as well by detaining the said
debt as for costs and charges about suit in that
behalf expended, whereof the said
convicted, as appears to us the said Mayor and Aldermen of record.
And have you the said moneys here in the Court without delay to
render to the said for debt
and damages aforesaid, and have there this precept. Dated at the
Guildhall London, this day of
in the year of our Lord One Thousand Eight Hundred and Sixty-

Attorney for the Plaintiff.

BRANDON.

To CHRISTOPHER FITCH, *Serjeant at Mace,* } By the Mayor, &c.
&c., or to any other *Serjeant at Mace, &c.*

TAKE

if be to be found within the Liberties of the City of *London*,
and safely keep so that you have body here in
Court without delay, to satisfy
as well a certain debt of
which the said
lately in the Queen's Majesty's Court holden before us the said
Mayor and Aldermen in the Chamber of the Guildhall of the said

City recovered against and also
 which in the said Queen's Majesty's Court holden before us the said
 Mayor and Aldermen in the Chamber of the Guildhall of the said
 City were adjudged to the said
 for damages sustained, as well by detaining the said
 debt as for costs and charges about suit in that
 behalf expended, whereof the said
 convicted, as appears to us the said Mayor and Aldermen of record.
 And have there this precept. Dated at the Guildhall *London*, this
 day of in the year of our
 Lord One Thousand Eight Hundred and Sixty-
 Attorney for the Plaintiff. BRANDON.

CHAPTER III.

AS TO REMOVAL OF JUDGMENT FOR EXECUTION.

The process of execution issued by the Mayor's Court can only be executed within the limits of the local jurisdiction ; but where it is necessary to obtain execution out of the jurisdiction of the Court, the 48th section of the Mayor's Court Act provides a summary mode of obtaining execution out of either of the superior courts, upon any judgment or rule of the Mayor's Court for the payment of money.

Execution
out of the
Superior
Courts.

To obtain the benefit of such section it is necessary to prepare and swear an affidavit in the Mayor's Court in the following form :—

In the Mayor's Court, London.

I of make oath and say, that judgment was duly signed in the Court of the Mayor and Aldermen of the City of London, on the day of in a certain action, wherein was Plaintiff, and was defendant, for the sum of debt, and costs.

Affidavit on
removal.—
Judgment.

And I further say, that the parchment writing marked A, exhi-

bited to me at the time of making this affidavit, is the record of the said action, and the judgment of the said Court of Mayor and Aldermen herein, and the said judgment remains unreversed and unsatisfied, as I verily believe.

And I further say that the signature is the signature of the proper officer of the said Court of Mayor and Aldermen.

The following Exhibit must be endorsed on the original judgment, to be signed by the registrar or deputy-registrar before whom the affidavit is sworn, viz. :—

This is the parchment writing marked A, referred to in the affidavit of [*insert name of deponent*], sworn before me the day of 186 .

No order of a Judge is necessary.

Then prepare a præcipe in the following form, which may be obtained at the court office :—

Præcipe on
removal of
judgment,
&c.—Sec. 48.

In the Mayor's Court, London.

Plaintiff

Defendant

Action entered day of 18

Judgment Debt in Plaint, £

Actual amount for which Judgment signed

Costs, £

Costs of removal, &c. [15s. 4d. is the ordinary allowance.]

Judgment signed day of 18

Execution issued day of 18

Plaintiff's Attorney,

of

The special forms of writ on removal of a Mayor's Court judgment to be issued in the superior court, whether *fi. fa.* or *ca. sa.*, may be obtained at Sullivan's, the well-known law stationer's. The writ

being properly filled up is to be taken with the judgment of the lower Court, the affidavit, and the above præcipe, to the proper officer of either the Queen's Bench, Common Pleas, or Exchequer, who will file the affidavit and præcipe, and affix the official seal, as in ordinary cases in the superior courts, to the judgment and execution ; and thereupon the attorney will proceed to lodge his writ of execution as if the case had been originally commenced in the superior court.

Where it is considered desirable to summon the debtor for examination and committal on judgments, &c., for debts or sums under £20, under sections 36, 37, 38, and 39, the forms in schedules A, B, C, and D, at the end of the Act are to be used, for which see Appendix. These forms are also to be obtained at the Mayor's Court office.

As to summoning debtor upon judgment, &c.

CHAPTER IV.

COSTS.

If in any action in covenant, debt, detinue, or assumpsit, not being an action for breach of promise of marriage, the plaintiff shall recover a sum not exceeding five pounds, or if in any action in trespass, trover, or case not being an action for malicious prosecution, or for libel, or for slander, or for criminal conversation, or for seduction, the plaintiff shall recover a sum not exceeding forty shillings, the plaintiff shall have judgment to recover such sum only, and no costs, unless the judge before whom such

Plaintiff recovering, not exceeding £5, in action of contract, and 40s. in an action for a wrong, to have no costs unless Judge at trial certify, or the Court make an order.

verdict shall be obtained shall certify on the back of the record that it appeared to him that there was a sufficient reason for bringing the said action in the court; and in such case the plaintiff shall have judgment to recover his costs of suit. Or if, where there is no verdict, the plaintiff shall make it appear to the satisfaction of the Court, on summons, that there was a sufficient reason for bringing the said action in the court, in such case the Court may, by rule or order, direct that the plaintiff shall recover his costs; and thereupon the plaintiff shall have judgment to recover his costs accordingly. (Sec. 11.)

It will be observed that the section as to costs is upon a similar principle to the enactment governing costs in the superior courts. The attorney of the successful party will be allowed costs in accordance with a settled scale, except in special cases. If amount recovered in contract does not amount to £5, and in tort 40s., no costs, unless the judge certify; and even then, no allowance for brief to counsel or counsel's fee.*

Special case
may be
stated for
opinion of
Court or of
Courts of
Common
Law at
Westminster.

The parties in any action or foreign attachment may, after issue joined by consent and by the order of the Court, state the facts of the case in the form of a special case for the opinion of the Court, or of any one of the superior Courts, and may agree that judgment shall be entered thereon for the plaintiff, garnishee, or defendant, as the Court or such superior Court may think fit.

Where the opinion of such superior Court shall be

* See Scale of Costs in Appendix.

required, the registrar of the Mayor's Court shall transmit such special case, under the seal of the Court, to the rule department of the master's office of the superior court in which the case is to be argued; and thereupon all such proceedings shall be taken and rules and regulations observed in the said superior court as are usual with reference to cases stated for the opinion of such superior court in actions therein preceding. (Sec. 6.)

Special cases to be transmitted by the Registrar to Rule Department of Master's office.

The registrar of the court, upon the production of an office copy of the rule of the superior court made upon hearing the said special case, shall enter judgment in the court, in conformity with the decision of the superior court. (Sec. 7.)

Registrar to enter judgment upon production of office copy.

CHAPTER V.

APPEAL.

If either party appearing at the trial of any cause in which the sum sought to be recovered shall exceed the sum of twenty pounds, shall be dissatisfied with the determination or direction of the Court, in point of law, or upon the admission or rejection of any evidence, such party may appeal from the same to any one of the superior courts (two or more of the puisne judges or barons thereof shall sit, out of Term, as a court of appeal for that purpose); provided that such party shall, within two days after such determination or direction give notice of appeal to the other party or his attorney, and also give security within

Appeal from Mayor's Court to Superior Courts at Westminster.

Security to be given if Court so direct.

such time or times as the Court shall direct, to be approved of by the registrar of the court (if the judge shall so direct) for the costs of the appeal. Whatever be the event of the application, and for the amount of the judgment, if he be the defendant, and the appeal be dismissed ; provided that such security, so far as regards the amount of the judgment, shall not be required in any case where the judge of the court shall have ordered the party appealing to pay the amount of the judgment into the hands of the registrar, and the same shall have been paid accordingly ; and the Court of Appeal may either order a new trial, on such terms as it shall think fit, or may order judgment to be entered for either party, as the case may be, and may make such order with respect to costs of the said appeal as such Court may think proper, and such orders shall be final. (Sec. 8.)

Appeal to be
in form of
case.

Such appeal shall be in the form of a case agreed on by both parties or their attorneys ; and if they cannot agree, the Judge of the court, upon being applied to by them or their attorneys, shall settle the case and sign it ; and such case shall be transmitted by the registrar to the Rule department of the master's office of the court in which the appeal is to be brought. (Sec 9.)

The power of appeal is very seldom resorted to ; the principal defect in the foregoing sections, is the necessity imposed on the Judges of the superior court to sit as a court of appeal out of Term ; all the necessary revision of the superior courts is in practice obtained under the following section. The

Judge presiding in the Mayor's Court never refusing leave to move where there is any substantial point.

If upon the trial of any issue the Judge shall grant leave to the plaintiff or defendant to move in any of the superior courts to set aside a verdict or a nonsuit, and to enter a verdict for the plaintiff or defendant, or to enter a nonsuit, as the case may be, or for a new trial, the party to whom such leave may have been given may apply by motion to such superior court, within such period of time after the trial as motions of the like kind shall from time to time be permitted to be made in such superior court, for a rule to show cause why such verdict or nonsuit should not be set aside, and a verdict entered for the plaintiff or defendant, or a nonsuit entered, or why a new trial should not be had, as the case may be, in such action; which court is authorized and empowered to grant or refuse such rule (which rule, when granted, shall operate as a stay of proceedings until the determination thereof), and afterwards to proceed to hear and determine the merits thereof, and to make such orders thereupon, and as to costs, as the same court shall think proper; and in case such court shall order a new trial to be had in such action, the party obtaining such order shall deliver the same or any office copy thereof to the Registrar of the said court, and thereupon all the proceedings on the former verdict or nonsuit shall cease, and the action shall proceed to trial, according to the practice of the court, in like manner as if no trial had been had therein; or in case the court before whom such rule

Rules to set aside or enter verdict, &c. may be moved before any of the courts at Westminster, if Mayor's Court shall grant leave.

shall be heard shall order the same to be discharged, the party obtaining any such order may, upon delivering the same or an office copy thereof to the Registrar, be at liberty to proceed in any such action as if no such rule Nisi had been obtained; and if a verdict be ordered to be entered for the plaintiff or defendant, or a nonsuit be ordered to be entered, as the case may be, judgment shall be entered accordingly. (Sec. 10).

In error from the Mayor's Court, the Exchequer Chamber, and not the Court of St. Martin's-le-Grand, to be the Court of Error.

No petition shall be presented to or received by the Lord Chancellor for any writ of error to review any proceedings in the Mayor's Court, nor shall any writ of error be issued thereout to review any such proceeding, nor shall any writ or other proceeding be issued to the Court of St. Martin's-le-Grand for any purpose as a Court of Error to review any proceedings of the Mayor's Court, but in all cases of error arising on proceedings in the Mayor's Court the Exchequer Chamber shall be the Court of Error. (Sec. 4.)

Causes under £50 not to be removed, except by Judge's order or on security.

No cause depending in the Mayor's Court in which the debt or damages sought to be recovered shall not exceed fifty pounds shall be removed by any defendant before judgment therein into any superior court, except in pursuance of a judge's order, unless the defendant, with two sufficient sureties, such as the Mayor's Court shall allow, shall first be bound to the plaintiff in the cause by recognizance, to be acknowledged in the Mayor's Court, in a sufficient sum for the payment of the debt or damages and costs, in case judgment shall pass against the defendant in the

superior court, or in case the cause shall be brought back by procedendo in the Mayor's Court. Any judge of any of the superior courts may in the exercise of his discretion, order a writ of certiorari to issue to remove any such cause depending in the Mayor's Court into any superior court, without such recognizance as aforesaid, and such cause may be removed into such superior court accordingly. (Sec. 16.)

No cause depending in the Mayor's Court shall be removed before judgment therein into any superior court, unless the writ removing such cause shall have been lodged with the proper officer of the court within one month after the service of the plaint, or unless such writ shall have been lodged with such officer before such action shall have been entered for trial according to the practice of the Mayor's Court. (Sec. 17.)

Writ to remove causes to be lodged within one calendar month after service of plaint.

The judge of the court may at any time, within the jurisdiction of the court, hear and grant applications for rules to show cause in arrest of judgment, or for judgment *non obstante veredicto*, or for a repleader, or for granting new trials, and for entering nonsuits and verdicts in causes pending in the court. (Sec. 22.)

Power to the Judge, within jurisdiction, to hear and determine motions, &c.

No cause depending in the court shall, before judgment be recovered, be removable into any of the superior courts (after plea pleaded), unless by leave of a judge of one of the said superior courts in cases which shall appear to such judge fit to be tried in one of the superior courts, and upon such terms, if any, as to payment of costs, giving security for debt

No cause to be removed to Superior Court except by leave of Judge, and upon certain terms.

and costs, or damages and costs, or such other terms as he shall think fit, upon summons. (Sec. 19.)

No suit on equity side of Court to be removed unless by special direction of Judge.

No suit commenced on the equity side of the Mayor's Court shall be removed from out of the said court into Chancery without the special order of the Lord Chancellor, the Master of the Rolls, or one of the Vice Chancellors, upon application for that purpose made; and no cause shall be so removed from out of the said equity side of the Mayor's Court if the Judge to whom such application shall be made shall consider that the matter in question in the said suit is fit to be tried in the Mayor's Court. And the said Master of the Rolls shall have power from time to time to make rules and regulations respecting the removal of such suits as aforesaid. (Sec. 20).

THE PRACTICE IN FOREIGN ATTACHMENT.

Nature of.

The most important power possessed by suitors in the Mayor's Court, is the process called Foreign Attachment. The object of the proceeding is to enable the creditor to attach the money, debts, or goods of his debtor, in the hands of a third person and so to deprive the owner of all control over the subject of the attachment until he appears to answer the claim of his creditor, or until the debt is satisfied,* and it makes no difference that the debtor be resident out of the City.

The custom was certified by Starkey, Recorder of London, in a particular case, to be:—"That if a plaint be affirmed in London before, &c., against any

* 1 Roll Abr., 447.—7 Vin. Abr., 232, pl. 4.

person, and it be returned nihil, if the plaintiff will surmise that another person *within the City** is a debtor to the defendant in any sum, he shall have garnishment against him to warn him to come in and answer whether he be indebted in the manner alleged by the other; and if he comes and does not deny the debt, it shall be attached in his hands, and after four defaults recorded on the part of the defendant, such person shall find new surety to the plaintiff, for the said debt; and judgment shall be that the plaintiff shall have judgment against him, and that he shall be quit against the other, after execution sued out by the plaintiff."

To entitle the creditor to avail himself of this proceeding, an action must be entered, in the mode prescribed by the court in an ordinary suit.

In the Mayor's Court, London.

day of

186

_____ Defendant.

_____ Plaintiff.

At the suit of

in a Plea of debt upon demand of £ _____ of lawful money of
Great Britain (or as the case may be).

Sworn £ _____ (insert the whole demand),

Plaintiff's attorney,
Of _____.

The creditor is the plaintiff and the debtor the defendant.

An affidavit must at the time of entering the action be made by the plaintiff, and be submitted to the

The affidavit.

* The person indebted to the defendant must be within the City.
Crosby v. Hetherington and Scott, N.R., 635.

registrar, and filed, with the *præcipe* of the action. The affidavit must set forth the amount and nature of the debt, and be positive as to the existence of a legal debt, as strictly as is required in an affidavit to hold to bail in the superior courts. It may be made by the attorney for plaintiff by his clerk or agent, or by any other person in a position to swear to the existence of the debt, or that they believe the debt to be due. Assignees of a bankrupt, executors or administrators, may swear or affirm that the debtor is indebted as appears by the books of the bankrupt, testator, or intestate, and that they believe the debt to be due.

Assignees,
Executors,
and Admin-
istrators.

How inti-
tuled.

It is intituled in the Mayor's Court, London. The affidavit or affirmation should contain the christian and surname of plaintiff and deponent, their residence and profession or business, but the defendant being supposed to be out of the way, these latter particulars are not necessary in reference to him. In like manner, the deposition or affirmation must contain the same particulars with reference to the other parties, as far as practicable.

What it must
contain.

Supplement-
ary affidavit
or affirma-
tion.

Should the affidavit or affirmation be defective in any material point, the Registrar will upon application allow a supplementary affidavit or affirmation.

AFFIDAVIT OF DEBT UPON A CHARTER PARTY.

In the Mayor's Court, London.

I, _____ of _____, make oath and say that a certain charter party dated the _____ day of _____, One thousand eight hundred and _____, was made and entered into between me and A. B., C. D., E. F., and G. H., whereby the said A. B., C. D., E. F., and G. H., undertook that a certain

ship or vessel called the _____ should proceed on a voyage to _____ and there load a cargo of corn, and return with same to some port in England. And I further say that the said A. B., C. D., E. F., and G. H., became bound to me in the penal sum of _____ pounds for the performance of such charter party. And I further say that the said ship or vessel did not proceed to _____, and there load the said cargo, of corn as undertaken by the said A. B., C. D., E. F., and G. H., by the said charter party, made and entered into as aforesaid, and whereby the said penalty has been incurred to this deponent.

Sworn at the Mayor's Court	}	Signature of deponent.
Office, London, this		
day of 18		
before, &c.		

FORM OF AFFIDAVIT FOR MONEY LENT, MONEY PAID, AND WORK AND LABOUR.

In the Mayor's Court, London.

I, _____ make oath and say that _____ is and stands justly and truly indebted unto me in the sum of _____ pounds for money lent and advanced by me to the said _____ at his request, and for money paid, laid out, and expended by me, to and for the use and on the account of the said _____, and at his request and for work and labour done and performed by me for the said _____ and at his request.

Sworn at the Mayor's Court	}	Signature.
Office, London, this		
day of 18		
before, &c.,		

The affidavit or affirmation may be sworn or affirmed before the registrar or his deputy. How sworn.

Where two or more join in the same affidavit or affirmation, the jurat must notice that it was so sworn or affirmed by defendants A. B. and C. D., as in the superior court. Jurat.

The action being now entered, and the affidavit

When at-
tachment
to be made.

sworn or affirmation made and filed, the plaintiff is entitled to his attachment against any property of the debtor, whether the same be in his own (the plaintiff's) hands or the hands of any other person in the City of London. The person having possession of the defendant's property is called the garnishee. The attachment is made by the serjeant-at-mace serving personally upon the garnishee the notice of attachment. An error in stating the name or names of garnishee in the notice is fatal, and cannot be amended.

ATTACHMENT PAPER.

To E. F. (*Garnishee*)

day of 186

Take notice, that by virtue of an action entered in the Lord Mayor's Court, London, on the day of 18 against C. D. defendant at the suit of A. B. plaintiff, in a plea of debt upon demand of pounds (*same as in the action*), I do attach all such moneys, goods, and effects, as you now have, or which hereafter shall come into your hands or custody of the said defendant, to answer the said plaintiff, in the plea aforesaid, and that you are not to part with such moneys, goods, and effects, without licence of the said court.

Sworn £

CHRISTOPHER FITCH,

A. T.

Serjeant-at-Mace.

Plaintiff's Attorney,
of (*address.*)

Lord Mayor's Court Office.

The plaintiff's attorney prepares the above notice, and, after the seal of the registrar is impressed upon it, leaves it with the serjeant-at-mace for service. The property to be attached must be within the jurisdiction of the city, except, for instance an auctioneer who may have sold out of the city, in which case, and in other analogous cases, service upon the garnishee in the city will be good, because he is sup-

Money or
goods must
be within
the jurisdic-
tion.

posed to carry the money about with him in his pocket. Service must be personal within the city; but service upon a clerk at place of business would be good unless garnishee could swear it did not come to his knowledge.

The service completes the attachment, and binds all money, goods, &c., of the defendant which there are, or thereafter may come to the hands of the garnishee, and all debts due or thereafter due from the garnishee to the defendant, up to the time of plea pleaded by the garnishee. The operation of such attachment is without limit as to time, and is unceasing should it not be proceeded upon.

A memorandum is afterwards made by the serjeant-at-mace, in the registrar's book, of the service.

The plaintiff is not limited to one attachment, but may have as many as he pleases in the one action and upon the one affidavit or affirmation, subject, however, to the rule that where there are several attachments against one property, that which is first served has the priority, unless the plaintiff, by his own neglect, permits a subsequent plaintiff to get judgment before him. Several attachments.

In case of an amicable arrangement between the plaintiff and defendant, the attachment may be withdrawn. The plaintiff, thereupon, signs a memorandum in the registrar's book, and a certificate is given to him to be served upon the garnishee, and when received by the garnishee it dissolves the attachment. The attachment is usually withdrawn by the plaintiff signing a written consent, which is presented at the Mayor's Court office. Attachment withdrawn.

FORM OF CERTIFICATE OF WITHDRAWAL OF ATTACHMENT.

Mr. _____

This is to certify that the attachment made in your hands on an action of debt, entered in the Mayor's Court, London, on the day of _____, against C. D. defendant, at the suit of A. B. plaintiff, was this day withdrawn, whereby the same is dissolved, made void, and of none effect.

Dated at the Guildhall, London, this _____ day of _____ 18
_____ Plaintiff's attorney.

Action not
affected.

The withdrawal of the attachment does not affect the action as between plaintiff and defendant.

It will be observed that attachment is somewhat in the nature of bail upon mesne process, and, if thereby withdrawn, cannot alter the rights of the parties, but settling the action necessarily dissolves the attachment.

May be at
any time.

The withdrawal may be at any stage of the proceedings.

The garnishee is protected equally by a payment to plaintiff upon judgment by default as after verdict.*

CHAPTER VI.

ON SUMMONING THE GARNISHEE.

THE attachment is a proceeding analogous to an arrest of defendant, inasmuch as the object of it is to secure the property of defendant in the garnishee's hands to answer the plaintiff's demand, and such attachment may be immediately dissolved by the defendant, or the garnishee for him, putting in substantial bail to the action, in which case the action

* *Westobey v. Day*, 22 L. J., Q. B., 418.

proceeds against the defendant, but in cases where the defendant or garnishee do not take that course the defendant is supposed to be called upon, at four court days, to appear, and the four defaults are recorded. The defendant is always supposed to have notice by the warning of the serjeant-at-mace to appear.* Therefore, on the fourth or any subsequent day after the day of the attachment made, the plaintiff may summon the garnishee to appear, the summons bearing *teste* the day of the fourth default.

SUMMONS TO THE GARNISHEE TO APPEAR.

Mr. _____

Summons to
Garnishee to
appear.

You are hereby summoned to be and appear in the Queen's Majesty's Court, to be holden before the Mayor and Aldermen in the chamber of the Guildhall of the City of London, on†
the _____ day of _____, at ten of the clock in the forenoon, to shew cause why _____, plaintiff, shall shall not have judgment against you, for _____ pounds in moneys numbered (or for five chests numbered and marked respectively, 1, 2, 3, 4, 5, and the goods and chattels therein contained) heretofore attached in your hands as the proper moneys (or as the proper goods and chattels, as the case may be) of _____, defendant; and hereby take notice, that if you do not appear, judgment will be entered against you for the same.

Dated at the Guildhall, London, the _____ day of _____ 18 _____

Attorney for the plaintiff,
of _____.

Serjeant-at-mace.

In the summons money and goods may be included, it being necessary to give the particulars and description of the goods, or the amount of the money the plaintiff seeks to attach the defendant by; in the case of goods the description must be sufficiently

* Per Campbell, C. J., *Westobey v. Day*, 22 L. J., Q. B., 427.

† At least the second day after the service, exclusive of Sunday, but may be more.

The sum-
mons.

accurate to identify them. If the plaintiff claim his whole debt and the garnishee defend the attachment the plaintiff may recover as against the garnishee, as much as he can prove; and if the garnishee do not defend the plaintiff will recover his whole demand; if the plaintiff can ascertain the amount in the garnishee's hands, it is better to proceed against the garnishee for that amount only.

Service.

When sealed in the office the summons is left with the sergeant-at-mace for service, and it must be served by the sergeant-at-mace or by his deputy.

One clear day must elapse between the day of issue and the return day.*

The garnishee may now appear, by entering a note of such appearance with the registrar, as directed in an ordinary action,† and at any time before the day named for appearance in the summons. Notice of this appearance must be given to plaintiff's attorney before two o'clock on that day, and must be stamped with the seal of the court.

If notice of appearance be served without such seal plaintiff may treat it as a nullity, and sign judgment.

If plaintiff
does not pro-
ceed, gar-
nishee may
enter a rule
and give
notice.

If the garnishee have entered an appearance, and the plaintiff do not summon the garnishee on the fourth court day after service of the attachment, the garnishee may enter a rule to prosecute, and give notice to plaintiff's attorney.

If plaintiff
do not pro-
ceed, gar-
nishee may
sign judg-
ment.

If the plaintiff do not thereupon proceed in his attachment within three days after such notice, the garnishee is entitled to judgment for want of prosecution, upon an affidavit of service of the notice.

* Ante, p. 43 (note).

† Ante, p. 11.

The plaintiff has been, in the foregoing proceedings, supposed to desire a speedy issue between himself and the garnishee, but it may be well to remind the practitioner that the notice of attachment being served upon the garnishee, all money, goods, and debts due, and *thereafter* due by garnishee to the defendant, are bound in garnishee's hands up to plea pleaded by him. It will sometimes be the means of compelling a settlement by defendant to defer serving the garnishee with the summons to appear, more particularly when the amount of money or goods in garnishee's possession is not equal in value to the debt, always bearing in mind the practice as to priority; and moreover, the garnishee may compel plaintiff to proceed as before stated.* The plaintiff's attorney will now, upon the appearance of garnishee, make up the record and deliver a copy to the garnishee's attorney, the third day after the appearance.

RECORD.

Plaint.

day of	18	{	Before the Mayor and Aldermen in the Chamber of the Guildhall of the City of London.
Plaintiff appoints	in his		
stead	, his		
attorney.		by	his attorney,

demands against pounds of lawful money of Great Britain, which he owes to and unjustly detains from the said plaintiff. For that whereas the said defendant on the day of in the year of the reign of her present Majesty Queen Victoria, at the parish of St. Helen, London, within the jurisdiction of this Court for and in consideration of divers sums of money before that time due and owing from the said defendant to the said plaintiff at the parish aforesaid and within the jurisdiction aforesaid, and then being in arrear and un-

* Ante, p. 44.

paid granted and agreed to pay to the said plaintiff the said sum of _____ pounds above demanded, where and when he the said defendant should be thereunto afterwards required. Yet notwithstanding the said defendant although often thereto requested, hath not yet paid to the said plaintiff the said sum of _____ pounds above demanded, or any part thereof, to the damage of the said plaintiff twenty shillings, and therefore he brings his suit, &c.,

Sworn £ _____ day of _____

Plaintiff
prays process.

Serjeant-at-
mace com-
manded to
summon de-
fendant.

Return of
nihil and *non*
est inventus.

That de-
fendant was
called and
did not ap-
pear.

Surmise (as
the case may
be.)

Plaintiff
prays process
against the
garnishee.

Serjeant-at-
mace com-
manded to
attach de-
fendant by
money in
hands of gar-
nishee.

And the said plaintiff by his said attorney prays process according to the custom, &c., and it is granted, &c., and thereupon it is commanded by the Court to _____ one of the serjeants-at-mace of the said Court that he, according to the custom of the said City, summon by good summoners the said defendant to appear here in this Court to answer the said plaintiff in the plea aforesaid and that he return and certify what, &c. And afterwards, to wit, at the same Court the said serjeant-at-mace returned and certified to the said Court according to the custom, &c., that the said defendant had nothing within the said City or the liberties thereof whereby he could be summoned, nor was he to be found within the same. And at the same Court the said defendant was solemnly called and did not appear, but made default and now at this same Court it is alledged by the said plaintiff by his said attorney, *that*

the garnishee, owes to the said defendant

pounds in moneys numbered as the proper moneys of the said defendant, and now has and detains the same in his hands and custody. And therefore the said plaintiff by his said attorney prays process according to the custom, &c., to attach the said defendant by the said _____ pounds so being

in the hands and custody of the said garnishee as aforesaid, so that the said defendant may appear in this Court here to be holden, &c., to answer the said plaintiff in the plea aforesaid, whereupon it is commanded by the Court to the said serjeant-at-mace that he, according to the custom, &c., attach the said defendant by the said _____ pounds so being in the hands and custody of the said garnishee as aforesaid, and the same in his hands and custody defend and keep so that the said defendant may appear in this Court here to be holden, &c., to answer the said plaintiff in the plea aforesaid. And that the said serjeant-at-mace return, &c., and afterwards (to wit) at a Court holden, &c., on

aforesaid, the said plaintiff by his said attorney appears, and the said serjeant-at-mace returned and certified to the same Court that he by virtue of the said precept on the day of between the hours of and in the noon, &c.

had attached the said defendant by the said pounds so being in the hands and custody of the said garnishee and the same defended, &c., according to the custom, &c., so that the said defendant might appear at this Court to answer the said plaintiff in the plea aforesaid. And thereupon the said defendant at the 1st default.

same Court was solemnly called and did not appear but made a first default, which said first default at the same Court is recorded according to the custom, &c.; and a further day is given by the Court to the said defendant to appear at the next Court to be holden, &c., on the day of , at which said next Court holden, &c., the said plaintiff by his said attorney appears and offers himself against the said defendant in the plea aforesaid and thereupon at the same Court the said defendant was again solemnly called and did not appear, but made a second default, which said second default is recorded &c. 2nd default. And thereupon a further day is given by the Court to the said defendant to appear at the next Court to be holden &c. on the day of aforesaid, at which said next Court holden &c. the

said plaintiff by his said attorney appears and offers himself against the said defendant in the plea aforesaid, and the said defendant was again solemnly called and did not appear, but made a third default, which said third default is recorded &c. And thereupon a further 3rd default. day is given by the Court to the said defendant to appear at the next Court to be holden &c. on the day of at which

said next Court holden &c. the said plaintiff by his said attorney appears and offers himself against the said defendant in the plea aforesaid; and thereupon the said defendant was again solemnly called and did not appear, but made a fourth default, which said fourth default is recorded &c. And thereupon after the said four defaults recorded by the Court against the said defendant in the plea aforesaid according to the custom &c., the said plaintiff by his said attorney, prays process according to the custom &c. to warn the said 4th default.

the garnishee to be and appear in this Court to shew cause &c., whereupon at the same court holden &c. it is commanded by the same Court to the said serjeant-at-mace that he, according to the custom of the City, warn and make known to the said garnishee the said plaintiff prays process to warn garnishee. Summons granted.

to be and appear here in this Court to be holden &c. on the day of to shew cause &c. why the said plaintiff ought not to have execution of the said pounds so attached in his hands and custody as aforesaid; and that the said serjeant-at-mace return and certify at the same Court what &c.; the same day is given by the Court to the said plaintiff to be there &c., at which said Court holden &c. the said plaintiff by his said attorney appears, and the said serjeant-at-mace hath returned and certified to the same Court that he by virtue of the said precept to him directed and according to the custom &c. had warned and made known to the said garnishee to be and appear at this same Court to shew cause &c. as above commanded, and thereupon at the same Court the said garnishee was solemnly called and appears, and appoints in his stead, his attorney, and hath leave to imparle until &c.

Return.

Appearance of garnishee.

It will be observed that the record contains, first, the ordinary count against the defendant; it then recites the prayer of process against the defendant, the summons, the return, the calls upon the defendant and his default, the prayer of process against garnishee, the summons granted, return and appearance; but in practice they are merely formal, beyond what is already explained.

If plaintiff do not deliver the record.

If the plaintiff do not so deliver the record the garnishee may enter a rule to prosecute, with the registrar, and obtain judgment, as in the case of omission by the plaintiff to summons, before stated.

The garnishee now must plead, and of course only to that portion of the record that charges him with having and detaining money or goods of defendant. The usual plea is

FORM OF PLEA.

And the said garnishee, by his attorney, on the day of, in the year of the reign aforesaid, comes and says that the said plaintiff ought not to have execution of the said pounds in moneys numbered [or judgment of appraisement of the

said goods and chattels] so attached as aforesaid, or any part thereof. Because he says, that at the time of making the said attachment, or at any time since, he had not owed to or detained from, or yet has owes to or detains from the said defendant named in the bill original and attachment aforesaid, the said pounds, or any part thereof [or the said goods and chattels or any part thereof], in manner and form as the said plaintiff by his attachment has above supposed. And of this he puts himself upon the country, &c.*

OF GARNISHEE'S ATTORNEY.

The garnishee may plead immediately upon the delivery of the record, but the plaintiff is not in a position to take any proceeding towards judgment until the third day after the appearance (inclusive of the day of entry of appearance), when he can demand a plea of the garnishee in writing, and the garnishee must then plead within four days from such demand, but the last four days do not begin to run until after demand of plea. If delivery of the record be deferred until the time for the demand, it may be endorsed thereon. The garnishee need not plead until demand of plea. The plaintiff and garnishee are now at issue. No notice of trial is given, but four days before the day on which the recorder has appointed a court to be holden, the cause is entered with the registrar.

When garnishee must plead.

If the plaintiff neglect to enter the cause for trial within ten days after issue joined, the garnishee may enter the cause for trial, and try by proviso at the following court.

Notices to produce and admit, subpoenas, briefs for counsel, &c., are the same as in ordinary actions,

* Where plea concludes to the country, plaintiff may add the similitur.

the word "attachment" being used instead of "cause."

The trial is conducted as in an ordinary action. The plaintiff's case being to prove money or goods of defendant's in the garnishee's hands, or a debt due by him to defendant at some time before the plea. The jury, by their verdict, find what money or goods were in garnishee's hands belonging to the defendant at the time of the attachment. Upon the verdict of the jury being given, it is recorded by the registrar or deputy, and afterwards entered on the record. Where the verdict is for the plaintiff, the money or goods are attached in garnishee's hands.

POSTEA ON VERDICT FOR PLAINTIFF, WHERE MONEY
IS ATTACHED.

Afterwards, that is to say, on the day of in the year of the reign of Her present Majesty, the jurors of the jury aforesaid, being solemnly called twelve of them, appeared who being elected, tried, and sworn upon the said jury, according to the custom of the said city, to declare the truth of, and concerning the premises, and to try the issue joined between the said parties in the plea aforesaid, for their verdict upon their oath, say, that at the time of making the attachment aforesaid, the said , the garnishee, owed to, and detained from the said , the defendant named in the bill original, and attachment aforesaid, the said sum of pounds in moneys numbered, as the proper moneys of the said defendant, in manner and form as the said plaintiff, by his said bill original and attachment aforesaid hath above supposed. *Therefore it is considered* by the court, that the aforesaid plaintiff have execution of the said pounds, in moneys numbered, so attached as aforesaid, and by the jury found as aforesaid by pledges, &c., of the defendant, &c., and process for the remainder, &c.

At the sitting of the court the cause list is called over. Any plaintiff not answering in person, or by

his attorney, the cause will be struck out, and in like manner, in case of defendant, will be taken as undefended.

A list of the causes and attachments entered for trial is prepared, and the causes in the paper for trial, upon any day during the sittings, is posted up in the office the evening before, and outside the court on day of trial.

CHAPTER VII.

WHEN GARNISHEE DOES NOT APPEAR.

WE have now considered the course of an attachment in a contested suit, but it will be convenient here to introduce the practice where the garnishee allows judgment to go by default.* If the garnishee do not enter an appearance, and give notice in the mode already explained,† before two o'clock on the return day of the summons, the plaintiff will be entitled to sign judgment by default: this is done by carrying the roll to the Registrar or Deputy-Registrar, who enters an *incipitur* of the judgment accordingly. If the garnishee do not appear.

The judgment, where the subject of attachment is a sum of money, is final, and execution may issue thereon immediately. Judgment final on attachment of money.

If the subject of attachment be goods, it is interlocutory, and is, in fact, judgment that they be appraised; and therefore, before execution, the goods must be valued, as hereafter explained. Where goods interlocutory.

* Payment by garnishee, upon judgment by default, protects him equally as upon judgment after verdict.

† Ante, p. 44.

The following is the form of

**JUDGMENT FOR WANT OF APPEARANCE IN CASE OF
ATTACHMENT OF MONEY.**

And thereupon at the same court the said garnishee is solemnly called, and doth not appear, but makes default; therefore it is considered by the Court that the aforesaid plaintiff have execution of the said pounds in moneys numbered so attached as aforesaid.

Judgment } By pledges, &c., if the defendant, &c., and
18— } process for the remainder, &c.

If the garnishee do not plead.

If the garnishee appear, and plaintiff have delivered the record, as we have seen,* he may, after three days inclusive from delivery of the record, demand a plea of the garnishee in writing, and if the garnishee do not plead within four days from such demand, the plaintiff may sign judgment. Short preliminary entry is—

JUDGMENT AGAINST GARNISHEE BY DEFAULT.

And was solemnly called and appears and appoints in his stead his attorney, and has leave to imparle until, &c. the day of 18 .
Because the garnishee has not pleaded to the attachment aforesaid, or shown any cause why the said plaintiff should not have execution as aforesaid. Therefore, &c.

The following is the form of

INTERLOCUTORY JUDGMENT IN CASE OF GOODS.

Therefore it is considered by the Court that an appraisement be made of the said goods and chattels, &c., whereupon, at the further petition of the said plaintiff, it is by the same Court commanded to , one of the sergeants-at-mace, that he cause the said two packages, marked X and Y, to be opened in his presence,

* Ante, p. 49.

and the same and the goods and chattels therein contained to be appraised in the presence of him, the said sergeant-at-mace, according to the custom of the said city, so that he have an appraisement thereof here in court on the day of in the year of the reign aforesaid.

Both the forms of judgment are given *in extenso*; but in practice execution is issued upon the entry of the *incipitur*, and the more formal entry is afterwards by plaintiff's attorney; before execution, however, the plaintiff will be obliged to find sureties, who undertake that should the defendant, within a year and a day, come into court and disprove the debt, assumed in his absence to be due from him to the plaintiff, then that the plaintiff will restore to the defendant the money now condemned in the hands of the garnishee, or so much thereof as defendant may prove not to have been due. The sureties undertake a like obligation in case of plaintiff's default. The sureties must be householders resident in the City. Pledges to restore.

The following are the rules of the court with respect to pledges to restore :—

At any time, after signing final judgment, the plaintiff shall, if required, give two days notice to the registrar of the names, residence, and occupation of the persons he proposes as pledges to restore; and if, upon inquiry by the registrar, they are found of sufficient responsibility for the amount recovered under the judgment, the registrar shall take the recognizance of such pledges to be taken upon the record, and the registrar shall thereupon, upon satisfaction being signed upon the record, pay over the proceeds to Rules of Court.

plaintiff's attorney. In case the registrar refuses the pledges tendered, they may justify in court.

PLEDGES TO RESTORE RECOGNIZANCE.

Security given, { Pledges for the within-named plaintiff to
18 . { restore, &c. if the defendant, &c. that
is to say.

A B,	Street, Merchant.
C D,	Street, Merchant.

The above memorandum is endorsed on the roll, and signed as in the form.

The precept of appraisement in case of goods is as follows :—

BY THE MAYOR, &c.

To Christopher Fitch, one of the Sergeants-at-Mace, or any other of the Sergeants-at-Mace.

We command you that according to the custom of the City of London, you cause to be opened in your presence two packages, marked X and Y, and the same, and the goods and chattels therein contained, by two freemen of the City of London, in your presence, to be appraised as the proper goods and chattels of defendant, attached in the hands and custody of garnishee, at the suit of plaintiff, so that you have the said appraisement here in court without delay. Dated at the Guildhall, London, this day of 18 .
Plaintiff's attorney.

The Sergeant-at-Mace thereupon procures two citizens to value the goods, &c., and they are obliged to swear at the Mayor's Court Office to the truth of the inventory and appraisement.

FORM OF THE INVENTORY AND APPRAISEMENT.

An inventory and appraisement, taken this day of
18 , by A B and C D, of two packages marked respectively X and Y, lately attached in the Mayor's Court, London, by ,
plaintiff, in the hands and custody of , garnishee, and

of the goods and effects therein contained, viz. (specify the articles), as the proper goods and chattels of _____, defendant, which said goods and chattels, together with the said packages, are valued by us at _____ pounds.

A B, citizen and fishmonger.

C D, citizen and painter.

Sworn in Court this _____ day of _____, 18 .

By rule of Court it is ordered, "that all persons who shall make any appraisement of goods under an attachment be freemen, and approved by the registrar." Rules of Court as to appraisers.

The following is the

ENTRY ON THE ROLL OF APPRAISEMENT, AND JUDGMENT THEREON.

On which day the Sergeant-at-Mace, returned and certified to the said Court, that he, by virtue of the said precept to him directed, had caused the said two packages, marked respectively X and Y, to be opened, and the same, and the contents thereof, that is to say (as the case may be), to be appraised on the oaths of A B and C D, citizens of London, to the value of _____ pounds, which said appraisement the said sergeant-at-mace has ready here in court, as to him above was commanded, and thereupon the said plaintiff prays execution of the said goods and chattels to be awarded to him, &c. Therefore it is considered by the Court that the aforesaid plaintiff have execution of the said goods and chattels so attached and appraised as aforesaid by pledges, &c., if the defendant, &c., and process for the remainder, &c.

The sureties to restore, &c., and practice is the same as already stated. The præcept of execution commands the sergeant-at-mace to deliver the goods to the plaintiff, and this is accordingly done as satisfaction of his demand to the amount of the appraisement.

FORMS OF THE PRECEPT OF EXECUTION.

Plaintiff's Attorney.

of

To CHRISTOPHER FITCH, Serjeant-at-Mace,
&c., or to any other other Serjeant-at-Mace, } By the Mayor, &c.
&c.,

We command you that you take (*the garnishee*) if (*he*) be to be found within the liberties of the City of London, and (*him*) safely keep so that you have (*his*) body here in Court without delay to satisfy (*the plaintiff*)—£——heretofore attached in (*his*) hands at the suit of the said (*plaintiff*) as the proper (*moneys*) of——, defendant, by due process of attachment and judgment of the Court here before us recovered against——, the said (*garnishee*), and have you the said (*garnishee*) here in Court without delay to render to the said (*plaintiff*) according to the tenor and effect of the said

ENTRY OF SATISFACTION ENDORSED ON THE ROLL.

Signature of plaintiff.

Where no execution is sued out against the garnishee plaintiff may proceed to judgment and execution against the defendant, and where he does not receive all his debt from the garnishee he may so proceed for the balance.*

The recovery by the plaintiff in the attachment is a protection to the garnishee in any suit against him by the defendant, although it would seem that the payment of money or delivery of goods must be under the compulsion of law.[†] Upon reference to

* *Dyer*, 82, b. † *Westoby v. Day*, 22 L. J., Q. B., 418.

the custom, it will be seen that the garnishee "shall be quit against the other *after execution sued out by the plaintiff*." The garnishee may voluntarily deliver the goods attached to the plaintiff upon receiving a certificate of the judgment, and appraisement, and security given. The certificate is the same in case of money or goods.

FORM OF CERTIFICATE.

Mr. (name of garnishee).

This is to certify that judgment hath been entered against you, in the Lord Mayor's Court, London, at the suit of plaintiff, for the sum of heretofore attached in your hands as the proper moneys of (or, in the case of goods, describe them) defendant, and that security hath been given by the plaintiff in the said attachment for restitution of the said moneys, if his debt should be disproved or avoided according to the custom, as by the record of the said judgment, now remaining in the said Court appears.

Dated the day of 18

A. B.,
Plaintiff's attorney,
of

Upon receipt of the above certificate, the garnishee usually pays the money to the plaintiff or to his attorney. Should he not do so, of course execution issues.

CHAPTER VIII.

ON DISSOLVING AN ATTACHMENT.

THE attachment may be dissolved by the garnishee for defendant, or the defendant himself putting in bail to the plaintiff's action. This may be done at

any time previous to entry of satisfaction on the record.

An attachment may be dissolved by bail or by payment of money into court with the defendant's consent.

When the sum in the garnishee's hands is larger than the debt sworn to by the plaintiff, by paying the amount of the plaintiff's debt so sworn to, or where the money in the garnishee's hands is less than the amount sworn to as the plaintiff's debt, then such sum as the Court may direct.

If in any case of notice of bail the bail do not justify at the time appointed then the plaintiff shall be at liberty to proceed in the attachment and to sign satisfaction, and the proceeds of the execution paid over as before.

All housekeepers, if sufficient, whether within the City or elsewhere, to be allowable as bail for dissolving attachments.

That a memorandum of all recognizances of bail to dissolve attachments be taken by the registrar and be entered in a book to be kept for that purpose.

Upon the dissolution of an attachment the registrar to grant a certificate thereof.

And thereupon the defendant may plead to the bill original.

The attachment also is dissolved by render of defendant's body. A defendant may be arrested in an action in a superior court, after having surrendered for the same cause in discharge of an attachment.*

It is ordered that the following method be adopted in putting in special bail in dissolution of an attachment:—

The defendant or defendants desirous of putting in bail in dissolution of an attachment, shall give to the plaintiff's attorney a notice of his, her, or their

* *Chamberlayne v. Green*, 9 M. and W., 790.

intention of putting in bail, and the notice shall contain the names of the proposed bail and the description of their profession, occupation, or calling, together with the number of the house and the name of the street or place where each of the bail resides, and, in addition, mention that the bail will attend at the office of the Court at a day and at a time to be named therein, to enter into the required recognizance, and to justify themselves as good and sufficient bail for the purpose of dissolving the attachment.

That the notice of bail shall be served two clear days at least, exclusive of Sundays and other public holidays, before the day mentioned in the said notice for the attendance of the said bail to enter into the recognizance and justify ; and in case a plaintiff shall be desirous of further time to inquire after the bail, he shall be at liberty to make application to the Court for that purpose, and such further time shall be allowed, and upon such terms as the Court shall think fit.

That the notice of bail shall be a stay of proceedings only so far as the same relates to the payment of money to the plaintiff by the Court under an execution in attachment.

That the plaintiff shall be at liberty to oppose the allowance of the bail at the return of the notice, and in default thereof or in case of his opposing the bail and the Court shall allow the same the attachment shall be dissolved.

**FORM OF NOTICE OF PUTTING IN BAIL IN DISSOLU-
TION OF AN ATTACHMENT.**

In the Mayor's Court, London.

Between

Plaintiff.

Defendant.

Garnishee.

Take notice, that it is the intention of the above-named defendant to put in bail at the suit of the above-named plaintiff, and in dissolution of the attachment made in the hands of the above-mentioned Garnishee and that the names and descriptions of the proposed bail are (*here insert in accordance with above rule*). And further take notice that the said proposed bail will on the day of at o'clock (*must be between 12 and 2*) in the noon attend at the office of this Court to enter into the required recognizance and to justify themselves as good and sufficient bail in that behalf.

Dated, &c.,

To

C. D.,

Plaintiff's Attorney.

Yours, &c.,

A. B.,

Defendant's Attorney.

The garnishee may put in bail in the absence of the defendant and after trial between himself and the plaintiff.

We have seen that the defendant may within a year and a day from the satisfaction acknowledged upon the record come in and disprove the debt. The plaintiff being bound to restore in money or value of the goods in case of defendant succeeding. The defendant may render his body in prison, or give security to pay the debt demanded as before stated when the action is in the same state as when bail is put in to dissolve an attachment, and then may bring a *scire facias ad disprobandum debitum*, and the plaintiff must be summoned to appear thereto.

**CERTIFICATE OF BAIL IN DISSOLUTION PUT IN
BY DEFENDANT.**

In the Mayor's Court, London.

Between

Plaintiff.

Defendant.

Garnishee.

This is to certify, that Bail has been put in for the above named defendant at the suit of the above named plaintiff and in dissolution of the attachment made in your hands, on the day of 185 , whereby the said attachment is dissolved, made void and of none effect.

Dated the day of 186 .

To

the above named garnishee.

**CERTIFICATE OF SURRENDER OF DEFENDANT IN
DISSOLUTION OF ATTACHMENT.**

In the Mayor's Court, London.

Between

Plaintiff.

Defendant.

Garnishee.

This is to certify, that the above named defendant did this day surrender body into the custody of one of the serjeants-at-mace of this Court at the suit of the above named plaintiff, and in dissolution of an attachment made in your hands, on the day of 185 , whereby the said attachment is dissolved, made void and of none effect.

Dated the day of 185 .

To

the above named garnishee.

The plaintiff must plead as in an ordinary action, and the attachment comes on for trial. The plaintiff being obliged to prove his debt. If he fail a verdict and judgment will pass against him for restitution of the money or value of the goods, and the sureties

must pay the same if plaintiff fail to do so. Nor can they discharge themselves by rendering plaintiff's body to prison. The plaintiff may succeed in proving a larger amount due than the sum recovered from the garnishee. In which case the sureties for defendant are liable in default of defendant paying the amount and costs.

Foreign attachment cannot be removed from the Mayor's Court after set down for trial except by order of one of the judges of the superior courts, upon terms. The summons is no stay of proceedings.—(Sec. 18.)

If one of several defendants remove a cause by *certiorari* he must put in bail for all the other defendants.*

OF A BILL OF PROOF.

This proceeding is taken by some person claiming property in the money or goods attached.

The rules adopted by the Court with respect to bills of proof, are as follows :—

Rules relating to bills of proof.

No bill of proof in any attachment be filed within four days of the day of trial of such attachment without an affidavit of merits.

The approver to be at liberty to file his probation in the first instance with an affidavit of merits.

No counsel's hand to be required to bills of proof or probation.

The rule for probation to be filed with the registrar, and no further time to be allowed to file a probation without an affidavit of merits.

That immediately the plaintiff has pleaded to probation each party may proceed to trial as in ordinary cases.

* Keat v. Castles, 7, B. and C., 525.

The Bill of Proof is as follows :—

And now come here into Court in their own proper persons
of gentleman, and of gentleman, and
pray to be admitted to prove a certain sum of £ (*or goods
describing them*) in the hands and custody of attached
and defended and under and by colour of a certain bill original
affirmed against defendant, at the suit of
plaintiff in a plea of debt upon demand of £ of lawful money
of Great Britain in the Court here, on the day of
and in a certain schedule or record of attachment to this plea
annexed specified to be the proper moneys (*or goods, &c.*) of and
belonging to these approvers, and because no other person at the
time of the said attachment or at any time since had or hath any
right or property in the said moneys (*or goods*) except the said
approvers. These approvers do not make this proof by fraud or
collusion to exclude the aforesaid plaintiff or others from their
actions and humbly pray to be admitted to make this proof according
to the custom, &c.

The plaintiff's attorney thereupon procures from
the registrar a rule, called a Rule for Probation.

RULE FOR PROBATION.

And the said plaintiff by his attorney prays in
what manner the said approvers claim property, &c.,

This is delivered to approver's attorney, and within
three days the approver files his

PROBATION.

(*For money ; if for goods, alter the form accordingly.*)

And the said the approvers by
their Attorney, come say they claim an interest in the sum of money
(or goods) is as aforesaid attached and defended for this, that the
said sum that has been so attached as aforesaid at and ever since
the time when it first came into the hands of the said garnishee,
hitherto and at and ever since the time when it first became due
from the said garnishee, hitherto has been, and was and now is due

from the said garnishee, for and in respect of certain money theretofore, and before the said attached sum was so attached as aforesaid, to wit, on the day of , in the year of our Lord one thousand eight hundred and fifty , received by the said garnishee for the use of the said approvers, and amounting to the amount of the said sum so attached. And the said approvers further say, that the said attached sum continually at and from the time when the said money for, and in respect whereof the said attached sum was, and is so due as aforesaid, hitherto hath been and now is due and owing from the said garnishee to the said approvers, for money so as aforesaid received by the said garnishee for the use of the said approvers, and never was, nor was any part thereof ever due or owing to the said defendant. And the said approvers further say, that the said attached sum from the time of the said receipt of the said money, for and in respect whereof the said attached sum was and is so due and owing as aforesaid, hitherto has been and now is in the hands of the said garnishee and by him detained for the use of them, the said approvers. Wherefore the said approvers, for themselves, claim the said sum of money so attached and defended as aforesaid, and say, that they are ready to verify the premises, and that the said sum of money was before and at the time when the same was so attached as aforesaid; and now is the property of the said approvers in manner and form as the said approvers have claimed to themselves the property thereof and they pray to be admitted to prove this according to the custom of the said City of London.

Plaintiff then replies, and traverses any material statement in the 'probation, and when at issue the question is tried as in an ordinary action.

REPLICATION.

And the said plaintiff, by his attorney, as to the probation of the said approvers says, that the said sum of money so attached as aforesaid, has not been, nor was, nor is due from the said garnishee, nor has the same been, nor is the same in the hands of the said garnishee, and by him detained for the use of the said approvers, in manner and form as alleged by the said approvers in their said probation; but on the contrary thereof, the said sum so

attached as aforesaid, is due and owing by the said garnishee to the said defendant, and is not the property of the said approvers ; and this, the plaintiff prays may be inquired of by the country, &c.

Judgment
day of
185

JUDGMENT FOR WANT OF PROBATION.

Because the said approver hath not set forth in what manner he claims the property attached. Therefore it is considered by the Court, that he take nothing by his bill of proof aforesaid, and that the garnishee go acquitted thereof, without a day, &c.

It may here be observed that the garnishee can show upon the trial that the property is in a third party.

OF ELONGAVIT.

This is a return made by the officer, where the garnishee, after judgment, either by default or after verdict in the case of goods, removes them out of the jurisdiction ; and therefore the serjeant-at-mace is unable to effect the appraisement in accordance with the præcept directed to him for that purpose. The cause may, therefore, be set down for the next Court day, when the plaintiff may give or procure evidence of the value of the goods, and the jury find the value, and execution may issue against the garnishee for the amount.

ENTRY OF VERDICT ON ELONGAVIT.

On which said day (*that is to say on the return day of the præcept*) the said serjeant-at-mace, returned and certified to the said Court, that the goods and chattels aforesaid, to places unknown out of the liberties of the said City are eloiigned, so that an appraisement thereof could not be made, as to him the said serjeant-at-mace was above commanded. And because the said garnishee hath eloiigned the said goods and chattels out of the liberties of the said City, so that the same cannot be appraised. Therefore it is commanded by the said Court, that an inquiry be made of the value

thereof, &c. and it is commanded by the said Court, to the said serjeant-at-mace, that he summon a jury to inquire and assess the value of the said goods and chattels so eloigned as aforesaid, where-upon the said serjeant at mace returned and certified to the said court, that he, by virtue of the said precept to him directed, had according to the custom of the said city, summoned a jury to inquire and assess the value of the said goods and chattels, and on the

day of _____ in the _____
year of her present Majesty Queen Victoria, the jurors aforesaid
being solemnly demanded, twelve of them appeared, who being
elected, tried and sworn according to the custom of the said city, to
declare the truth of and concerning the premises, and to inquire the
value of the said goods and chattels so eloigned as aforesaid, upon
their oath, assess the value of the same, at _____
pounds. Therefore &c.

SEQUESTRATION.

The proceeding by sequestration is where a defendant absconds, leaving property on his own premises in the city; but it is not often resorted to, and it is unnecessary to allude to it further.

Some provisions as to interpleader are contained in the Act printed in the Appendix :—

XLIV. It shall be lawful for any judge of the Mayor's Court, either in or out of Court, to administer oaths and take declarations for the purpose of authenticating any documents which may be required to be produced in any foreign country or in any place out of the jurisdiction of the Court.

The forms of the various proceedings have been introduced in their order, as necessary to an accurate conception of the mode of procedure. The practitioner can, however, and is strongly advised to, procure all necessary documents at the Mayor's Court office.

All items marked thus (*) are allowed according to the merits of the case; the amounts entered are allowed in ordinary cases.

APPENDIX.

COSTS.

PLAINTIFF'S COSTS.

<i>Action.</i>	Under £10.	Out of pocket.	£10 and und. £20.	Out of pocket.	£20 and above.	Out of pocket.
	<i>s. d.</i>	<i>s. d.</i>	<i>s. d.</i>	<i>s. d.</i>	<i>s. d.</i>	<i>s. d.</i>
Letter	3 0	...	3 6	...	3 6,	
Instructions for Ac-						
tion	3 0	...	3 4	...	6 8	
Action, and paid .	10 0	4 0	15 6	4 6	17 6	5 0
Copy and service (a)	2 6	...	2 6	...	2 6	
	<u>18 6</u>		<u>24 10</u>		<u>30 2</u>	

(a) 3s. 4d. extra is allowed for every additional defendant.

Service of Plaintiff out of the jurisdiction.

In addition to the ordinary charges.

Affidavit, &c. . .	4 0	2 0	5 0	2 0	7 0	3 0
Copy order to serve	1 0	...	1 0	...	1 0	

The above costs are allowed for service within three miles of the General Post Office, but where defendant resides beyond that distance extra costs will be allowed, according to the distance of the residence of the defendant, or for agent's charges.

The costs are marked at the time of the grant of the order for service of the plaintiff out of the jurisdiction.

Substituted Service of Plaintiff.

Affidavit	4 0	1 0	6 0	1 0	7 0	1 0
Extra copy action						
and paid	1 0	6 1	0	6 1	0	6
Attending for order,						
including service						
and paid	4 6	2 0	5 0	2 0	7 0	2 0
	<u>9 6</u>		<u>12 0</u>		<u>15 0</u>	

<i>Costs to Trial.</i>	Under £20. <i>s. d.</i>	Out of pocket. <i>s. d.</i>	£20 and above. <i>s. d.</i>	Out of pocket. <i>s. d.</i>
In addition to Costs at page 69 :				
* Instructions to proceed	3 4	...	6 8	
* Copy declaration and de- mand of plea	3 0	...	4 0	
Instructions for brief (a)	6 8	...	13 4	
Brief: (a)				
In ordinary cases	20 0			
Drawing, <i>per folio</i>	1 0	...	1 0	
Copy, <i>per folio</i>	0 4	...	0 4	
Entering plea on record, joinder of issue, demurrer, &c., and notice	4 0	...	5 0	
If special, above three folios, <i>per folio</i>	0 4	...	0 4	
Entering cause for trial and notice, and summoning jury	9 0	4 0	12 0	5 0
* Notice to inspect and ad- mit, and notice to produce each ordinary	4 0	...	5 0	
Attending inspection	3 4	...	6 8	
Affidavit of notice to pro- duce, &c.	4 0	1 0	5 0	1 0
Subpoena, <i>vide</i> Writs.				
Searching, if cause in paper	3 4	...	3 4	
Fee to counsel. <i>vide</i> Fees to Counsel.				
Attending counsel (a)	3 4	...	6 8	
* Attending court	3 4	...	6 8	
Entering verdict on record and paid	6 0	3 0	8 0	5 0
Notice of taxing	2 0	...	3 0	
* Bill of costs and copy.	3 0	...	4 0	

(a) In special cases, discretionary. In ordinary cases under £10, 15s. only will be allowed for brief; and no allowance for attending counsel with brief.

	Under £20. s. d.	Out of pocket. s. d.	£20 and above. s. d.	Out of pocket. s. d.
Signing judgment and paid	7 0	4 0	12 0	5 0
Attending taxing, and paid	4 4	1 0	6 4	2 0
* Letters, &c.	3 4	...	6 8	
Marking cause a remanet	3 0	3 0	4 0	4 0
Affidavit of increase and copy (a)	6 0	1 0	6 0	1 0

(a) An affidavit of increase is not required or allowed unless called for by the opposite party.

Judgment in default of Appearance.

	Under £10. s. d.	Out of pocket. s. d.	£10 and und. £20. s. d.	Out of pocket. s. d.	£20 and above. s. d.	Out of pocket. s. d.
Costs as at page 69 .	18 6	...	24 10	...	30 2	
Instructions to proceed . . . . .	...	...	3 4	...	6 8	
Affidavit of service .	5 0	1 0	5 0	1 0	6 0	1 0
Judgment	5 6	2 6	6 6	3 6	11 0	4 0
	<u>29 0</u>		<u>39 8</u>		<u>53 10</u>	

Judgment for want of a Plea.

Costs as at page 69 .	18 6	...	24 10	...	30 2	
*Instructions to proceed . . . . .	...	...	3 4	...	6 8	
*Copy declaration to deliver, and demand of plea . .	3 0	...	3 0	...	4 0	
Judgment	6 0	3 0	7 0	4 0	12 0	5 0
Bill of costs	2 0	...	2 0	...	3 0	
Notice taxing	2 0	...	2 0	...	3 0	
Attending taxing and paid	3 4	1 0	4 4	1 0	5 4	2 0
*Letters, &c.						

Incident to Rule for payment of Debt by Instalments, and Judgment.

	Under £20. s. d.	Out of pocket. s. d.	£20 and above. s. d.	Out of pocket. s. d.
Attendances upon defendant on terms of settlement, and drawing consent	6 8	...	13 4	
Drawing up rule and service. If defendant has not ap- peared,	5 4	2 0	5 4	2 0
Entering appearance for de- fendant	5 0	3 0	7 0	3 0
Instructions to proceed to judgment on account of nonpayment of instalments by defendant	2 6	...	3 4	
Signing judgment marked without taxation . . .	7 0	4 0	12 0	5
If costs not agreed, add Notice of taxing	2 0	...	3 0	
Attending, taxing, and paid .	4 4	1 0	5 4	2 0
When plaintiff is entitled to immediate judgment by his rule, in lieu of the last item, charge				
Attending, taxing and signing judgment . . . , . .	8 0	5 0	13 0	6 0

Pleadings.

	Under £20.	£20 and above.
	s. d.	s. d.
If the declaration exceeds the allowance of four folios, calculated in the costs of the Plaint, 1s. <i>per</i> folio drawing, engrossing, and copy to deliver.		

One or more pleas of three folios or under, exclusive of instructions, but inclusive of engrossing	4 0	5 0
--------------------------------------------------------------------------------------------------------------	-----	-----

If above three folios, for every folio, 1s.

Attending pleader	3 4	3 4
Paid, <i>vide</i> Fees to Counsel.		

No Special Declaration will be allowed in cases in which the *Concessit solvere* will apply.

Fees to Counsel.

	Under £20 (a).	£20 and above.
	s. d.	s. d.
In ordinary cases, including clerk . . .	23 6	44 6
Refresher	13 0	23 6

In special cases extra fees will be allowed, as also more than one counsel, according to the merits of the case.

Refreshers will be allowed where a cause is postponed from one sittings of the Court to another, but not to an adjournment day. No refresher will be allowed in cases under £10, unless very special.

Pleaders' fees will only be allowed in special cases.

Consultations or advice on evidence will only be allowed in very special cases.

(a) The practitioner must be careful, because the taxing master will not allow, *as of course*, either brief or fee to counsel under £10.

Paying Money in and out of Court.

	Under £50. <i>s. d.</i>	Out of pocket. <i>s. d.</i>	Above £50. <i>s. d.</i>	Out of pocket. <i>s. d.</i>
Attending	3 4	...	6 8	...
Paid, under £5 ...	<i>s. d.</i> 1 0			
£5 and under 10 ...	1 6			
10 „ 20 ...	2 0			
20 „ 50 ...	2 6			
50 and upwards ...	5 0			
Replication, taking money out of Court in satisfac- tion	3 0	...	4 0	...
Signing judgment in case of default being made in pay- ment of the costs taxed .	7 0	4 0	12 0	5 0

Witnesses.

	<i>s. d.</i>		<i>s. d.</i>
Labourers or journeymen, police constables or inspectors	3 6	to	7 0
Master tradesmen, clerks, &c.	5 0	to	10 6
Professional men, auctioneers, engineers, notaries, gentlemen, esquires, bankers, merchants	10 6	to	21 0

Travelling expenses of witnesses will be allowed according to the sums reasonably and actually paid, but in no case shall exceed 1*s.* per mile one way.

No allowance will in any case be made to plaintiff or defendant, except for travelling expenses.

<i>Writs</i>	Under £10.	Out of pocket.	£10 and under £20.	Out of pocket.	£20 and above.	Out of pocket.
	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
Ca. Sa. or Fi. Fa.	5 0	1 0	5 0	1 0	7 0	2 0
Spa. ad test . . .	5 0	1 0	5 0	1 0	5 0	1 0
Spa. duces tecum .	6 0	1 0	6 0	1 0	6 0	1 0

Application and
order for Spa. } Same allowance as upon an application for
for service out } service of plaint out of the jurisdiction.
of jurisdiction }

Service of Spa.
within 3 miles
of the General
Post Office . .

2 6 ... 2 6 ... 2 6

If beyond three } Same allowance as upon a plaint, for service
miles . . . } out of the jurisdiction.

Judgment Summons.

		Out of pocket.
	s. d.	s. d.
Summons and service, and paid . . .	3 0	0 6
Attending Court	3 4	
Attending for committal, and instruct- ing officer	4 4	1 0

These costs will only be allowed in cases where ordered at the hearing of the summons.

Miscellaneous.

	Under £20.	Out of pocket.	£20 and above.	Out of pocket.
	s. d.	s. d.	s. d.	s. d.
Paid for certificate and oath to affidavit for removal of judg- ment	2 0	2 0	3 0	3 0
Notice of application for order for particulars of demand, set off, time to deliver pleadings, and the like	2 0	...	3 0	

	Under £20. s. d.	Out of pocket. s. d.	£20 and above. s. d.	Out of pocket. s. d.
Attendance on each application, including order and service	5 4	2 0	5 4	2 0
Drawing particulars of demand or set off and copy, if under three folios.	4 0	...	5 0	
If above three folios,				
Drawing, <i>per folio 8d.</i> Copying, <i>per folio 4d.</i>				
Demand of declaration or other pleading	2 0	...	3 0	
Attendances in general mat- ters (a)	3 4	...	3 4	
Copy, notices, &c., to annex to brief or record, each	1 0	...	1 6	
Attending, withdrawing record, and paid (b)	4 4	1 0	5 4	2 0
(If record withdrawn on day of trial, the fee out of pocket will be the same as on a verdict.)				
Instructions to counsel in com-				
mon matters	3 4	...	3 4	
Circular letters	2 0	...	3 6	
After the first	1 0	...	1 6	
Affidavits, common	4 0	...	6 0	
If special,				
Drawing, <i>per folio 8d.</i> Copying, <i>per folio 4d.</i>				

(a) No allowance will be made in any case for attending deponent to be sworn to affidavit.

(b) No allowance where rule drawn up, or judgment signed on withdrawal of plea.

DEFENDANT'S COSTS

	Under £20. s. d.	Out of pocket. s. d.	£20 and above. s. d.	Out of pocket. s. d.
Instructions to appear . .	3 4	...	6 8	
Appearance and notice .	8 0	3 0	9 0	3 0
Instructions for pleas . .	3 4	...	6 8	
Drawing same and copy to deliver, <i>Nunquam indebi-</i> <i>tatus</i>	4 0	...	5 0	
Attending to deliver . . .	3 4	...	3 4	
Instructions for brief, brief, and further costs	} Same allowance as for plaintiff's cost			

Costs of bringing in Record per proviso.

Entering cause for trial and notice	9 0	4 0	12 0	5 0
Notice to plaintiff's attorney to bring in record . . .	2 0	...	3 0	
Attending searching, if record brought in	3 4	...	3 4	
Plaintiff's attorney not hav- ing lodged record, making up same	5 0	...	7 6	
If special, above seven folios <i>per folio</i>	0 4	...	0 4	

FEES OF SERJEANT-AT-LAW.

Actions.

	£	s.	d.
Executions, not exceeding £10	7	6	
£10 and not exceeding £20, and 6d. on each £1 above £10	7	6	
£20 and not exceeding £50, and 3d. on each £1 above £20	12	6	
£50 and not exceeding £100, and 3d. on each £2 above £50	1	0	0
Above £100	1	7	6
Warrant upon leaving execution	2	6	
Executing writ of possession	1	0	0
Commitment warrant (besides mileage)	7	6	

Fees on Verdicts.

Under £20	4	0	
Above £20	6	0	

PLAINTIFF'S COSTS.

(As allowed on taxation between party and party.)

A. v. B.		VERDICT FOR £8 11s.			
1860.				£ s. d.	
Sept. 6th.	—Instructions to sue	.	.	0	3 0
	Action and paid	.	.	0	10 0
„ 11th.	—Copy and service	.	.	0	2 6
„ 26th.	—Instructions to proceed	.	.	0	3 4
	Declaration and demand of plea	.	.	0	3 0
Oct. 1st.	—Attending application for time to plead	.	.	0	3 4
„ 3rd.	—Attending application for particulars, order made	.	.	0	3 4
	Attending application for further time to plead order made	.	.	0	3 4
„ 20th.	—Attending to enter cause for trial, notice, and summoning jury	.	.	0	9 0
„ 24th.	—Long notice, to produce	.	.	0	4 0
	The like, to admit	.	.	0	5 0
	Affidavit of notice to produce	.	.	0	4 0
„ 25th.	—Attending defendant's attorney on his inspecting	.	.	0	3 4
„ 27th.	—Attending inspecting documents, under defendant's notice	.	.	0	3 4
	Engrossing record	.	.	0	4 0
	Copy particulars to annex	.	.	0	1 0
	Instructions for brief	.	.	0	6 8
	Drawing same (36 folios)	.	.	1	16 0
	Copy, plaintiff's notice to produce, to annex	.	.	0	1 0
	The like, defendant's notice to produce	.	.	0	1 0
	The like, defendant's notice to admit	.	.	0	1 0
	Attending searching cause	.	.	0	3 4
	Attending Mr. ——— with brief	.	.	0	3 4
	Paid his fee	.	.	2	4 6
„ 30th.	—Attending Court, cause not on	.	.	0	6 8
	The like, cause tried	.	.	0	6 8
	Paid Court fees	.	.	0	4 0
	Entering verdict on record	.	.	0	6 0
Dec. 3rd.	—Signing judgment, and paid	.	.	0	7 0
	Drawing bill of costs, and copy	.	.	0	3 0
	Notice of taxing	.	.	0	2 0
	Attending taxing, and paid	.	.	0	4 4
	Letters &c.	.	.	0	6 8
				<hr/> £10 8 8 <hr/>	

DEFENDANT'S COSTS.

(As allowed on taxation between party and party.)

In the Mayor's Court, London.

A. v. B.

Above £10

186	£	s	d.
July 15th.—Writing plaintiff's attorney with undertaking to appear	0	3	6
Instructions to appear	0	3	4
Appearance and notice	0	8	0
„ 21th.—Notice of application for time copy and service	0	2	0
„ 22th.—Attending same and order made and order copy and service	0	5	4
Instructions for Plea	0	3	4
Drawing same and copy to deliver	0	4	0
Attending to deliver	0	3	4
Instructions for brief	1	1	0
Drawing same, fo. 26	1	6	0
Fair copy	1	0	0
Aug. 4th.—Notice to inspect and admit, copy and service	0	5	0
Notice to procure copy and service	0	4	0
„ 5th.—Attending plaintiff's attorneys, inspecting according to notice	0	3	4
Attending plaintiff's attorney on his admitting defendants documents	0	3	4
Attending admitting plaintiff's documents	0	3	4
Spa ad Test	0	5	0
Spa duces tecum	0	6	0
To Mr.——— with Brief	2	4	6
Attending him.	0	3	4
Co. and service of spa on witness, and paid 1s.	0	3	6
The like, witness B.	0	3	6
The like, witness C.	0	3	6
The like, Plaintiff	0	2	6
„ 8th.—Attending, searching if cause on paper	0	3	4
Carried over	£9	14	0

	£	s.	d.
Brought up	9	14	0
Aug. 9th.—Attending, searching if cause in paper, found same was in	0	3	0
Notice to witness G, that cause in paper	0	1	0
The like, witness F	0	1	0
„ 10th.—Attending Court, cause tried, verdict for defendant	0	10	6
Paid Court fees	0	4	0
Entering verdict and paid	0	6	0
Signing judgment, and paid	0	7	0
Bill of Costs and copy	0	6	0
Notice of taxing copy and service	0	2	0
Attending, taxing and paid	0	4	4
Letters &c.	0	6	8
	£12	5	6

In the Mayor's Court, London.
C ats D.

186	£	s.	d.
Jan. 28th.—Instructions to defend	0	3	4
Appearance and fee, and notice thereof	0	8	0
Feb. 4th.—Notice of application for time copy and service	0	3	0
Instruction for Pleas	0	3	4
Drawing same	0	6	8
To Mr. ——— to settle	0	10	6
Attending him	0	3	4
„ 5th.—Attending summons for time to plead order made 2 days	0	3	4
Order copy and service	0	5	0
Engrossing plea	0	3	4
Drawing and copy particulars of set off	0	1	0
Attending delivering plea and particulars of set off	0	3	4
March 4th.—Demand of Replication copy and service	0	3	0
„ 9th.—Attending inspection at plaintiff's attorneys according to notice	0	3	4
Carried over	3	0	6
G			

		£	s.	d.
	Brought up	3	0	6
Mar. 14th—Spa ad Test . . . . .	.	0	5	0
Copy and service on witness E . . . . .	.	0	2	6
Ditto on witness F . . . . .	.	0	2	6
„ 15th.—Instructions for brief . . . . .	.	1	0	0
Drawing same folio 14 . . . . .	.	0	14	0
Fair copy . . . . .	.	0	12	0
Copy notice to inspect and admit to annex . . . . .	.	0	1	0
The like notice to produce . . . . .	.	0	1	0
The like particulars of demand . . . . .	.	0	1	0
Attending, searching if cause in paper . . . . .	.	0	3	4
To Mr. ——— with brief . . . . .	.	2	4	6
Attending him . . . . .	.	0	3	4
Attending court, cause heard . . . . .	.	0	6	8
Paid court fees . . . . .	.	0	5	0
Entering verdict on record and paid . . . . .	.	0	6	0
Signing judgment and paid . . . . .	.	0	7	0
Bill of costs and copy, and copy for plaintiff's attorney . . . . .	.	0	5	0
Notice of taxing copy and service . . . . .	.	0	2	0
Attending taxing . . . . .	.	0	3	4
Paid	0	1	0
Letters, &c.	0	6	8
		£10	13	4

THE MAYOR'S COURT OF LONDON PROCEDURE ACT, 1857.

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AN
A C T

FOR

Abolishing certain Jurisdiction of the SHERIFFS
COURTS of the City of LONDON, and for amend-
ing the Process, Practice, and Mode of Pleading
in the Mayor's Court, and for extending the
Jurisdiction thereof.

[ROYAL ASSENT, 17th August, 1857.]

WHEREAS there exist in the City of London certain
courts of law called respectively the Sheriffs Court of the
Poultry Compter, and the Sheriffs Court of the Giltspur-
Street Compter :

And whereas it is expedient that certain functions and
jurisdiction of the said Sheriffs Courts should be abolished :

And whereas it is expedient to make the Mayor's Court
more efficient, by extending its powers, and simplifying its
practice and mode of procedure :

MAY IT THEREFORE PLEASE YOUR MAJESTY

That it may be enacted, and be it enacted by the Queen's
most Excellent Majesty, by and with the Advice and Consent
of the Lords Spiritual and Temporal, and Commons, in this
present Parliament assembled, and by the Authority of the
same, as follows ; (that is to say) :

Commencement I. This Act shall commence and come into operation on
of Act. the First day of October, One thousand eight hundred and
fifty-seven.

II. In citing this Act in other Acts of Parliament and in legal instruments and other proceedings, it shall be sufficient to use the expression "The Mayor's Court of London Procedure Act 1857."

Short Title of Act.

III. From and after the commencement of this Act no action or suit for the recovery of any debt or demand shall be commenced in the Sheriffs Court, either of the Poultry Compter or of the Giltspur-street Compter, save only and except pleas of personal actions under the provisions of the London (City) Small Debts Act 1852, which may continue to be brought as heretofore in the Sheriffs Court, without being entitled as of either Compter: Provided always that nothing in this Act contained shall be deemed or construed to take away or diminish the power or authority of the Sheriffs of London or either of them to execute any writ of inquiry or other writ or mandate, which may be directed to them by any court of competent authority, or by any Judge or officer thereof, or by any person lawfully authorized to issue the same, or any writ of trial which may be directed to them or either of them under or by virtue of the provisions of the Act of the third and fourth William the Fourth, chapter forty-two, nor to take away or diminish any other power or authority which the Sheriffs of London or either of them can have or hath, or can or may lawfully exercise, by Act of Parliament, Charter, Act of Common Council, custom, prescription, or otherwise howsoever.

No action or suit to be brought in Sheriffs Court, except in certain cases.

IV. And whereas it is expedient to facilitate the proceedings in error on matters arising in the Mayor's Court, therefore from and after the commencement of this Act no petition shall be presented to or be received by the Lord High Chancellor for any writ of error to review any proceeding in the Mayor's Court, nor shall any writ of error be issued thereout to review any such proceeding, nor shall any writ or other proceeding be issued to the Court of Saint Martin's-le-Grand for any purpose as a Court of Error to review any proceedings of the Mayor's Court, but in all cases of error arising on proceedings in the Mayor's Court the Exchequer Chamber shall be the Court of Error for the purposes of this Act, and

In error from the Mayor's Court, the Exchequer Chamber, and not the Court of St. Martin's-le-Grand, to be the Court of Error.

all matters in error shall be proceeded with according to the rules to be framed for that purpose as is hereinafter expressed.

Special case may be stated for opinion of court, or of courts of common law at Westminster.

V. The parties in any action or foreign attachment may, after issue joined, by consent, and by the order of the court, state the facts of the case in the form of a special case for the opinion of the court, or of any one of the superior courts, and may agree that judgment shall be entered thereon for the plaintiff, garnishee, or defendant, as the court or such superior court may think fit.

Special cases to be transmitted by the Registrar to Rule department of the Master's office.

VI. When the opinion of such superior court shall be required, the Registrar of the Mayor's Court shall transmit such special case, under the seal of the court, to the Rule department of the Master's office of the superior court in which the case is to be argued, and thereupon all such proceedings shall be taken and rules and regulations observed in the said superior court as are usual with reference to cases stated for the opinion of such superior court in actions therein pending.

Registrar to enter judgment, upon production of office copy rule.

VII. The Registrar of the court, upon the production of an office copy of the rule of the superior court made upon hearing the said special case, shall enter judgment in the court in conformity with the decision of the superior court.

Appeal from Mayor's Court to superior courts at Westminster.

VIII. If either party appearing on the trial of any cause in which the sum sought to be recovered shall exceed the sum of Twenty pounds shall be dissatisfied with the determination or direction of the court in point of law, or upon the admission or rejection of any evidence, such party may appeal from the same to any one of the superior courts, (two or more of the puisne Judges or Barons thereof shall sit out of term as a Court of Appeal for that purpose); provided that such party shall, within two days after such determination or direction, give notice of appeal to the other party or his attorney, and also give security within such time or times as the court shall direct, to be approved of by the Registrar of the court (if the Judge shall so direct), for the costs of the appeal, whatever be the event of the appeal, and for the amount of the judgment, if he be the defendant and the appeal be dismissed; provided nevertheless, that such security, so far as regards the amount of the judgment, shall not

Security to be given, if court so direct.

be required in any case where the Judge of the court shall have ordered the party appealing to pay the amount of such judgment into the hands of the Registrar, and the same shall have been paid accordingly; and the said Court of Appeal may either order a new trial, on such terms as it shall think fit, or may order judgment to be entered for either party, as the case may be, and may make such order with respect to the costs of the said appeal as such court may think proper; and such orders shall be final.

IX. Such appeal shall be in the form of a case agreed on by both parties or their attorneys; and if they cannot agree, the Judge of the court, upon being applied to by them or their attorneys, shall settle the case and sign it; and such case shall be transmitted by the Registrar to the Rule department of the Master's office of the court in which the appeal is to be brought.

Appeal to be in form of case.

X. If upon the trial of any issue the Judge shall grant leave to the plaintiff or defendant to move in any of the superior courts to set aside a verdict or a nonsuit, and to enter a verdict for the plaintiff or defendant, or to enter a nonsuit, as the case may be, or for a new trial, the party to whom such leave may have been given may apply by motion to such superior court, within such period of time after the trial as motions of the like kind shall from time to time be permitted to be made in such superior court, for a rule to show cause why such verdict or nonsuit should not be set aside, and a verdict entered for the plaintiff or defendant, or a nonsuit entered, or why a new trial should not be had, as the case may be, in such action; which court is hereby authorized and empowered to grant or refuse such rule (which rule, when granted, shall operate as a stay of proceedings until the determination thereof), and afterwards to proceed to hear and determine the merits thereof, and to make such orders thereupon, and as to costs, as the same court shall think proper; and in case such court shall order a new trial to be had in any such action, the party obtaining such order shall deliver the same or any office copy thereof to the Registrar of the said court, and thereupon all the proceedings on the former verdict or nonsuit shall cease, and the action shall proceed to trial, according to the practice of the court, in like manner as if no

Rules to set aside or enter verdict, &c. may be moved before any of the courts at Westminster, if Mayori's Court shall grant leave.

trial had been had therein ; or in case the court before whom such rule shall be heard shall order the same to be discharged, the party obtaining any such order may, upon delivering the same or an office copy thereof to the Registrar, be at liberty to proceed in any such action as if no such rule Nisi had been obtained ; and if a verdict be ordered to be entered for the plaintiff or defendant, or a nonsuit be ordered to be entered, as the case may be, judgment shall be entered accordingly.

Plaintiff recovering not exceeding 5*l.* in action of contract and 40*s.* in action for a wrong to have no costs, unless Judge at trial certify to entitle plaintiff to costs, or the court make an order for plaintiff to have costs.

XI. If in any action in covenant, debt, detinue, or assumpsit, not being an action for breach of promise of marriage, the plaintiff shall recover a sum not exceeding Five pounds, or if in any action of trespass, trover, or case, not being an action for malicious prosecution, or for libel, or for slander, or for criminal conversation, or for seduction, the plaintiff shall recover a sum not exceeding Forty-shillings, the plaintiff shall have judgment to recover such sum only, and no costs, unless the Judge before whom such verdict shall be obtained shall certify on the back of the record that it appeared to him that there was a sufficient reason for bringing the said action in the court, and in such case the plaintiff shall have judgment to recover his costs of suit ; or if when there is no verdict the plaintiff shall make it appear to the satisfaction of the court, on summons, that there was a sufficient reason for bringing the said action in the court, in such case the court may by rule or order direct that the plaintiff shall recover his costs, and thereupon the plaintiff shall have judgment to recover his costs accordingly.

Where debt does not exceed 50*l.* no plea to jurisdiction allowed, when defendant dwells or carries on business, or debt arose either wholly or in part, in the City of London.

XII. Where the debt or damage claimed in any action shall not exceed the sum of Fifty pounds, no plea to the jurisdiction shall be allowed, provided the defendant or one of the defendants shall dwell or carry on business within the City of London or the liberties thereof at the time of the action brought, or provided the defendant or one of the defendants shall have dwelt or carried on business at some time within Six months next before the time of the action brought, or if the cause of action, either wholly or in part, arose therein.

Court may order that the plaintiff may be served in any part of England or Wales.

XIII. The court may, if it shall think fit, in any case, when it shall satisfactorily appear by affidavit that the cause of action arises within the jurisdiction of the court, order

that the plaint may be served in any part of England or Wales; and the service of any plaint in pursuance of such order shall be as valid and effectual as if the same had been served within the jurisdiction of the court, provided that a copy of such order shall be served at the time of the service of the plaint.

XIV. In all cases where an order of the court shall be made under the last preceding section, all the proceedings in the cause shall be had and taken as if the defendant had been duly served with the plaint within the jurisdiction.

All further proceedings to be had as usual.

XV. No defendant shall be permitted to object to the jurisdiction of the court in or by any proceeding whatsoever, except by plea.

Objection to jurisdiction to be by plea.

XVI. No cause depending in the Mayor's Court in which the debt or damages sought to be recovered shall not exceed Fifty pounds shall be removed by any defendant before judgment therein into any superior court, except in pursuance of a Judge's order, as hereinafter mentioned, unless the defendant, with two sufficient sureties, such as the Mayor's Court shall allow, shall first be bound to the plaintiff in the cause by recognizance to be acknowledged in the Mayor's Court, in a sufficient sum for the payment of the debt or damages and costs, in case judgment shall pass against the defendant in the superior court, or in case the cause shall be brought back by *Procedendo* in the Mayor's Court: Provided always, that any Judge of any of the superior courts may in the exercise of his discretion order a writ of *Certiorari* to issue to remove any such cause depending in the Mayor's Court into any superior court, without such recognizance as aforesaid, and such cause may be removed into such superior court accordingly.

Causes under 50l. not to be removed except by Judge's order or on security.

XVII. No cause depending in the Mayor's Court shall be removed before judgment therein into any superior court, unless the writ removing such cause shall have been lodged with the proper officer of the court within One month after the service of the plaint, or unless such writ shall have been lodged with such officer before such action shall have been

Writ to remove causes to be lodged within one calendar month after service of plaint.

entered for trial according to the practice of the Mayor's Court.

Foreign attachment not to be removed after set down for trial, except by express directions of Judge upon terms.

XVIII. No foreign attachment shall be removed from the Mayor's Court at any time after the same shall be set down for trial, except by the express order of one of the Judges of the superior courts, and then upon such terms, as to costs, bail, or payment of money into court, as such Judge on summons shall think fit; provided that a summons only, without any order of the Judge thereon, shall not stay the trial of the attachment in the Mayor's Court.

No cause to be removed into superior court except by leave of Judge, and upon certain terms.

XIX. No cause depending in the court shall, before judgment be recovered, be removable into any of the superior courts (after plea pleaded), unless by leave of a Judge of one of the said superior courts in cases which shall appear to such Judge fit to be tried in one of the superior courts, and upon such terms, if any, as to payment of costs, giving security for debt and costs, or damages and costs, or such other terms as he shall think fit, upon summons.

No suit on equity side of court to be removed unless by special direction of Judge.

XX. No suit commenced on the equity side of the Mayor's Court shall be removed from out of the said court into Chancery without the special order of the Lord High Chancellor, the Master of the Rolls, or one of the Vice Chancellors, upon application for that purpose made; and no cause shall be so removed from out of the said equity side of the Mayor's Court if the Judge to whom such application shall be made shall consider that the matter in question in the said suit is fit to be tried in the Mayor's Court: And the said Master of the Rolls shall have power from time to time to make rules and regulations respecting the removal of such suits as aforesaid.

Power of court to compel parties to allow inspection of documents, and also copies to be taken.

XXI. In any action or other legal proceeding in the court, the court may, on application made for such purpose by either party, compel the opposite party to allow the party making the application to inspect all documents in the custody or power or under the control of such opposite party relating to such action or other legal proceeding, and, if necessary, to take examined copies of the same, or to procure the same to

be duly stamped, in all cases in which, previous to the passing of this Act, a discovery might have been obtained by filing a bill, or by any other proceeding in a Court of Equity, at the instance of the party so making application as aforesaid to the court.

XXII. The Judge of the court may at any time, within the jurisdiction of the court, hear and grant applications for rules to show cause in arrest of judgment, or for judgment Non obstante veredicto, or for a repleader, or for granting new trials, and for entering nonsuits and verdicts in causes pending in the court.

Power to the Judge, within jurisdiction, to hear and determine motions &c.

XXIII. It shall be lawful for the court at all times to amend all defects and errors in any proceeding, whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not; and all such amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between the parties shall be so made; and all such amendments may be made with or without costs, or upon such terms as to the court may seem fit.

Power to court to amend errors.

XXIV. The court may in any action, upon the application of any of the parties thereto, order the examination on oath, upon interrogatories or otherwise, before the Registrar or other person or persons to be named in such order, of any witness or witnesses in any part of England and Wales, and by the same or any subsequent order or orders may give all such directions touching the time, place, and manner of examination, and all other matters and circumstances connected with such examination, as may appear reasonable and just.

Depositions of witnesses may be taken.

XXV. When any such order shall be made the court may, in and by the first or any subsequent order, command the attendance of any person to be named in such order for the purpose of being examined, or the production of any writing or other document to be mentioned in such order, and may direct the attendance of any such person to be at his own place of abode, or elsewhere, if necessary or convenient so to do; and the party at whose instance such order may have

Compelling attendance of witnesses or production of documents.

been made and issued shall have all the same remedies against such person, in case of nonattendance, as he would have against any person for nonattendance in obedience to any writ of Subpœna ad testificandum duly served according to the practice of the court; provided that, in addition to the service of the order, an appointment of the time and place of attendance in obedience thereto, signed by the person or persons appointed to take the examination, or by one or more of such persons, shall be so served, together with or after the service of such order; provided also, that every person whose attendance shall be so required shall be entitled to the like conduct money, and payment for expenses and loss of time, as upon attendance at a trial; provided also, that no person shall be compelled to produce under any such order any writing or other document that he would not be compellable to produce at a trial of the cause.

Payment of expenses.

As to production of documents.

Commission may be issued by Judge of the court to examine witnesses abroad.

XXVI. Upon the application of any of the parties to any action depending in the court, the court may order a commission to issue for the examination of witnesses upon oath at any place or places beyond the limits of England and Wales, by interrogatories or otherwise, and by the same or any subsequent order or orders may give all such directions touching the time, place, and manner of such examination, and all other matters and circumstances connected with such examination, as may appear reasonable and just.

Examination of prisoners.

XXVII. Any sheriff, gaoler, or other officer having the custody of any prisoner may take such prisoner for examination at the place or places named in any such order, by virtue of a writ of Habeas corpus to be issued for that purpose, which writ shall and may be issued by any Judge under such circumstances and in such manner as such Judge may now by law issue the writ commonly called a writ of Habeas corpus ad testificandum.

Examination of witnesses to be taken upon oath.

XXVIII. The person or persons authorized to take the examination of witnesses by any such rule, order, writ, or commission as herein mentioned shall and may take all such examinations upon the oath of the witnesses, to be administered by the person so authorized; and if upon such oath any

person making the same shall wilfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury, and shall and may be indicted and prosecuted for such offence in the county where such evidence shall be given, or in the County of Middlesex if the evidence be given out of England.

XXIX. The Registrar, or any other person named in any such rule or order to take any examination in pursuance thereof, may and he is hereby required to make, if need be, a special report to the court touching such examination, and the conduct or absence of any witness or other person thereon or relating thereto; and the court is hereby authorized to institute such proceedings and make such order and orders upon such report as justice may require, and as may be instituted and made in any case of contempt of court.

The person appointed for taking examinations may report to the court.

XXX. The costs of every rule or order to be made for the examination of witnesses by virtue of the provisions herein contained, and of the proceedings thereupon, shall be costs in the cause, unless otherwise directed either by the Judge of the superior court making such order or by the court.

Costs of order and proceedings.

XXXI. No examination or deposition to be taken by virtue of the provisions herein contained shall be read in evidence without the consent of the party against whom the same may be offered, unless it shall appear to the satisfaction of the court that the examinant or deponent is not in England or Wales, or is dead, or unable from permanent sickness or other permanent infirmity to attend the trial, in all or any of which cases the examinations and depositions, certified under the hand of the Commissioner, Registrar, or other person taking the same, shall and may, without proof of the signature to such certificate, be received and read in evidence, saving all just exceptions.

Restrictions as to reading depositions.

XXXII. Upon application made by or on behalf of any defendant in any action in the court, such application being made after declaration, and before plea, by affidavit or otherwise, showing that such defendant does not claim any interest in the subject matter of the suit, but that the right thereto is claimed or supposed to belong to some third party who has

Interpleader by defendant in action.

sued or is expected to sue for the same, and that such defendant does not in any manner collude with such third party, but is ready to bring into court or to pay or dispose of the subject matter of the action in such a manner as the court may order or direct, it shall be lawful for the Registrar to issue a summons calling upon such third party to appear in court, and to state the nature and particulars of his claim, and to maintain or relinquish his claim; which summons may be served upon such third party in any part of England or Wales; and upon such summons the court may hear the allegations as well of such third party as of the plaintiff, and in the meantime stay the proceedings in such action, and finally order such third party to make himself defendant in the same or some other action, or to proceed to trial on one or more issue or issues, and also direct which of the parties shall be plaintiff or defendant on such trial, or, with the consent of the plaintiff and such third party, their counsel or attorneys, dispose of the merits of their claims, and determine the same in a summary manner, and make such rules and orders therein, as to costs and all other matters, as may appear to be just and reasonable.

Judgment and
decision final.

XXXIII. The judgment in any such action or issue as may be decreed by the court, and the decision of the court in a summary manner, shall be final and conclusive against the parties, and all persons claiming by, from, or under them.

Claim of party
not appearing
barred.

XXXIV. If such third party shall not appear upon such summons to maintain or relinquish the claim, being duly served therewith, or shall neglect or refuse to comply with any rule or order to be made after appearance, it shall be lawful for the court to declare such third party, and all persons claiming by, from, or under him, to be for ever barred from prosecuting his claim against the original defendant, his executors or administrators, saving nevertheless the right or claim of such third party against the plaintiff, and thereupon to make such order between such defendant and the plaintiff, as to costs and other matters, as may appear just and reasonable.

XXXV. When any claim shall be made to or in respect of any goods or chattels taken or intended to be taken in execution under the process of the court, or to or in respect of the proceeds or value thereof, by any landlord, for rent, or by any person not being the party against whom such process has issued, it shall be lawful to and for the Registrar, upon application of the Serjeant-at-Mace or any of his officers made before or after the return of such process, and as well before as after any action brought against such Serjeant-at-Mace or any of his officers, to issue a summons calling before the court as well the party issuing such process as the party making such claim; and thereupon any action which shall have been brought in any of the superior courts, or in any local or inferior court of record, in respect of such claim, shall be stayed; and the court in which such action shall have been brought, or any Judge thereof, on proof of the issue of such summons, and that the goods and chattels were so taken in execution, may order the party bringing such action to pay the costs of all proceedings had upon such action after the issue of such summons; and the said court shall thereupon exercise, for the adjustment of such claim, and the relief and protection of the said Serjeant-at-Mace or any of his officers, all or any of the powers and authorities hereinbefore contained, and make such rules and decisions as shall appear to be just, according to the circumstances of the case; and the costs of all such proceedings shall be in the discretion of the court.

For relief of Serjeant-at-Mace in execution of process against goods.

XXXVI. In every case where judgment shall have been signed in the court against any person for any debt not exceeding Twenty pounds, exclusive of costs, or where any person shall be indebted to any other in a sum not exceeding Twenty pounds, by virtue of any judgment or order for the payment thereof, or by virtue of any order for the payment of any costs, the court shall, upon the application of the creditor by any petition or note in writing, according to the form in Schedule (A.) to this Act annexed, grant a summons, according to the form in Schedule (B.) to this Act annexed, which said summons may be served upon the said debtor where he may reside or be; and if the debtor appear accord-

Creditor obtaining judgment or order in respect of debt not exceeding 20l. may summon the debtor before the court.

Debtor or creditor
may be ex-
amined.

ing to such summons or at any adjournment thereof, he shall be interrogated, if the creditor think fit, touching the manner and time of his contracting his debt, the means or prospect of payment he then had, the property or means of payment he still hath or may have, and the disposal he may have made of any property since contracting such debt; and such creditor shall also be examined, if the court or debtor shall think fit, touching his claim against such debtor; and it shall be lawful for the court, then, or at any future sitting of the court, to make an order on the said debtor for the payment of his debt, by instalments or otherwise; and in case the debtor shall not attend as required by the said summons or at any adjournment thereof, and shall not allege a sufficient excuse for not attending, or shall, if attending, refuse to disclose his property or his transactions respecting the same, or respecting the contracting of the debt, or shall not make answer thereof to the satisfaction of the court, or shall appear to the court to have been guilty of fraud in contracting the debt, or of having wilfully contracted it without reasonable prospect of being able to pay it, or of having concealed or made away with his property in order to defeat his creditors, or having made any vexatious defence to any action for the recovery of the debt, or if he appear to have the means of paying the same at the time of hearing and shall not pay the same, if the court shall so order, or shall not pay the same by instalments at such time as the court shall order or as the court shall have ordered, and without any further summons thereon, it shall be lawful for the court to order such debtor to be committed for any time not exceeding Forty days to the Debtors' Prison within the City of London, which order of committal shall be according to one of the Forms in Schedule (C.) to this Act annexed.

Power to issue
order for pay-
ment on commit-
tal or signing
judgment.

XXXVII. It shall be lawful for every person who shall be entitled to sign judgment in the court where the amount of the debt recovered shall not exceed Twenty pounds, exclusive of costs, to give, previously to signing such judgment, notice, in the form in Schedule (D.) to this Act annexed, to the person against whom such judgment may be signed; and in case such notice shall be given, the court

shall, upon judgment being signed, have the like powers of hearing the parties, and making such order for payment on committal, as in the cases hereinbefore mentioned.

XXXVIII. When an order for commitment shall have been made under this Act, and the person against whom such order of commitment shall have issued shall be out of the jurisdiction of the court, it shall be lawful for the officer charged with the execution of such order of commitment to take the person against whom such order shall have issued wherever such person shall reside or be.

Power for officer to take person on order of committal, though out of jurisdiction of court.

XXXIX. In every case in which judgment shall have been obtained in the court, or order made, for a sum not exceeding Twenty pounds, exclusive of costs, it shall be lawful for the Registrar of the court, either during the sitting of the court or out of court, to hear the parties, and to grant an order for payment of the amount of the judgment or order and costs by instalments or otherwise, or to issue an order of committal, as in the cases hereinbefore mentioned.

Registrar to have power to grant orders for payment or committal.

XL. The court may from time to time frame a table of fees, upon the proceedings in the before-mentioned cases, and make an order for the payment thereof, in addition to the debt and costs already recovered.

Court to frame table of fees and costs.

XLI. The Registrar of the court may, in the absence of the Judge, hold the court and transact all the business of the court, except the trial of issues in law or in fact.

Registrar of Mayor's Court may hold courts.

XLII. The Debtors' Prison for the City of London shall be the prison wherein all persons committed into custody under any process or proceeding of the Mayor's Court shall be confined; and the keeper for the time being of the said Debtors' Prison shall and he is hereby required to receive and take into his custody every person who shall be committed or ordered to stand committed by the court; and in case the keeper of the said prison shall neglect or refuse

Debtors Prison of City of London to be the prison of the court.

to receive or take into his custody any person committed by the court, or shall, before the expiration of the time for which any person shall be committed to his custody, discharge such person out of his custody, and wilfully suffer such person to go at large, without a warrant or order for that purpose in writing, signed by the plaintiff or by the court (or by some other court of competent authority), such keeper so offending in either of the said cases shall pay to the plaintiff at whose suit such person was in custody respectively the debt or debt and costs for which such person shall have been committed to the custody of such keeper, and also any sum not exceeding Twenty pounds at the discretion of the court.

In the absence of the Recorder the Common Serjeant may sit as Judge.

XLIII. In the absence of the Recorder the Common Serjeant for the time being of the City of London may preside as Judge in the Mayor's Court, and in case of illness or unavoidable absence of either the said Recorder or Common Serjeant, it shall be lawful for them or either of them, or in case of their inability to make such appointment, for the Mayor, Aldermen, and Commons of the City of London in Common Council assembled, to appoint some other person who shall have practised as a barrister-at-law for at least Seven years to act as a deputy of such Judge in the said court during such illness or unavoidable absence; and it shall also be lawful for the said Recorder or Common Serjeant, or either of them, to appoint a deputy who shall have practised as a barrister for at least Seven years to act for either of them in the said court, for any time or times not exceeding in the whole Two months in any consecutive period of Twelve months; and every deputy so appointed during the time for which he shall be so appointed shall have all the powers and privileges and perform all the duties of a Judge of the said court.

Power to appoint a deputy.

Judge to administer oath to authenticate documents.

XLIV. It shall be lawful for any Judge of the Mayor's Court, either in or out of court, to administer oaths and take declarations for the purpose of authenticating any documents which may be required to be produced in any foreign country or in any place out of the jurisdiction of the court.

XLV. It shall be lawful for the court from time to time to make, alter, and revoke rules, orders, and regulations required for and in respect of the offices of the Mayor's Court, and the nature, duties, fees, and emoluments attaching to the respective officers; and from time to time to make, alter, and revoke rules for regulating the practice and pleading, and the taking of oral evidence, in the court, and the fees to be taken on the proceedings in the said court, and the forms relating thereto, both in law and equity, as shall from time to time to it seem necessary and proper: Provided always, that such rules and forms, and any order for revoking or altering the same, shall be signed by the Judge of the said court, and that no such rules, orders, or forms shall be of any force until they shall have been allowed and confirmed by three of the Judges of the superior courts; and it shall be lawful for the Judges of the superior courts from time to time to make such rules, orders, and regulations as they may think fit for carrying into execution the provisions of this Act relative to the removal of causes from the Mayor's Court to the superior courts.

Judge may make and alter rules, to be confirmed by Judges of superior courts.

XLVI. It shall be lawful for Her Majesty from time to time, by an Order in Council, to direct that all or any part of the provisions of any Act for the amendment of the law, now passed or hereafter to be passed, and also all or any of the rules and regulations made in pursuance thereof, shall extend to and apply to the Mayor's Court; and within One month after such order shall have been made and published in the London Gazette such provisions and rules respectively, or parts thereof (and the forms necessary in respect thereof), shall extend and apply in manner directed by such order; and any such order may be in like manner altered and annulled; and in and by any such order Her Majesty may direct by whom any such powers or duties incident to the said provisions, applied under the said several Acts and Rules in respect thereof, shall and may be exercised with respect to the matters in such court, and may make any order, regulation, or form which may be deemed requisite for carrying into operation in such court the provisions so applied.

Her Majesty may direct provisions of certain Act of Parliament, and the rules framed in pursuance thereof, to apply to Mayor's Court.

Power to Judge
to direct attach-
ment to be tried
in Mayor's Court.

XLVII. In any case where a garnishee may appear before a Judge under the "Common Law Procedure Act 1854," and dispute his liability, the Judge may order that an issue shall be tried in the said Mayor's Court, in such manner and form as the Judge shall direct, and such proceedings shall be had therein as if the same question had been tried in the superior courts.

For removal of
judgments into
superior court.

XLVIII. In every case where final judgment shall have been obtained in the Mayor's Court, and also in every case where any rule or order shall have been made by the court, whereby any sum of money, or any costs, charges, or expenses shall be payable to any person, any writ of execution upon such judgment, or any rule or order so made by the court, shall be sealed by the Sealer of Writs of any of the superior courts, upon a precipe of the same being lodged with him, together with an affidavit verifying the judgment or order, and that the same remains unreversed and unsatisfied, and immediately thereupon such writ of execution and such judgment, rule, or order shall become and be of the same force, charge, and effect as a writ of execution or judgment recovered in or a rule or order made by such superior court, and all the reasonable costs and charges attendant upon such sealing shall be recovered in like manner as if the same were part of such judgment or rule or order: Provided always, that no such judgment or rule or order when so removed as aforesaid shall affect any lands, tenements, or hereditaments as to purchasers, mortgagees, or creditors any further than the same would have done if the same had remained a judgment, rule, or order of the Mayor's Court, unless and until a writ of execution thereon shall be actually put into the hands of the Sheriff or other officer appointed to execute the same.

Fines on jurors
for non-attend-
ance.

XLIX. If any juror having been duly summoned shall not attend in pursuance of such summons, or, after his appearance, shall wilfully withdraw himself from the presence of the court, the court shall impose such fine upon every juror so making default, unless some reasonable excuse shall be proved to the satisfaction of the court, as the court

shall think meet, not exceeding five pounds; and in case of nonpayment of such fine according to the directions of the court, the same may be levied in such manner as is provided for the levying of fines imposed upon common jurors for any similar default, under the provisions of 5 and 6 Will. IV., cap. 76, sec. 121.

L. If in any action or suit now or at any time hereafter depending in the court, it shall appear to the court, or if the court is not sitting to the Judge thereof, that it is proper to compel the personal attendance at any trial of any witness who may not be within the jurisdiction of the court, it shall be lawful for the court or Judge, if in their or his discretion it shall so seem fit, to order that a writ, called a writ of Subpoena ad testificandum, or of Subpoena duces tecum, or warrant of citation, shall issue in special form, commanding such witness to attend such trial or process wherever he shall be within the United Kingdom, and the service of any such writ or process in any part of the United Kingdom shall be valid and effectual.

Court may issue process to compel the attendance of witnesses, although not within its jurisdiction.

LI. The parties in any cause may by consent in writing, signed by them or by their respective attorneys, leave the decision of any issue of fact to the court, provided that the court shall in their or his discretion think fit to allow such trial; or provided the Judges of the superior courts shall in pursuance of the power vested in them by law for such purpose make any general rule or order dispensing with such allowance, either in all cases or in any particular class or classes of cases, to be defined by such rule or order; and such issue of fact may thereupon be tried and determined, and damages awarded where necessary, in open court by the Judge who might otherwise have presided at the trial thereof by jury; and the verdict of such Judge shall be of the same effect as the verdict of a jury, save that it shall not be questioned upon the ground of being against the weight of evidence; and the proceedings upon and after such trial, as to the power of the court or Judge, the evidence and otherwise, shall be the same as in the case of trial by jury.

Judge may by consent try questions of fact.

No cause to be removed, except by Certiorari or Judge's order.

LII. No cause shall be removeable from the court otherwise than by a Writ of Certiorari, or by the order of a Judge of one of the superior courts, or by the special order of the Lord High Chancellor, the Master of the Rolls, or one of the Vice-Chancellors, and every Writ of Certiorari shall be made returnable immediately, whether in or out of term.

Compensation to officers of abolished court, &c.

LIII. Every person who is legally entitled to any franchise or office in either of the Sheriffs Courts, whose office shall be abolished, or whose office shall be deprived of any emolument by this Act, shall be entitled to make a claim for compensation to the Mayor, Aldermen, and Commons of the City of London in Common Council assembled, within Six months after the commencement of this Act; and it shall be lawful for the said Mayor, Aldermen, and Commons, in such manner as they shall see fit, to inquire what was the nature of the office, and what was the tenure thereof, and what were the lawful fees and emoluments in respect of which such compensation shall be claimed; and the said Mayor, Aldermen, and Commons shall in each case award such gross or yearly sum, and for such time, as they shall think just under the circumstances of each case, subject to the approval of The Lords Commissioners of Her Majesty's Treasury; and all compensation, when so awarded, shall be paid by the said Mayor, Aldermen, and Commons out of the funds of the said city.

Interpretation Clause.

LIV. In this Act the following words and expressions shall have the several meanings hereby assigned to them (unless there be something in the subject or context repugnant to such construction) that is to say,—

‘ Person.”

The word “person” shall include corporations, whether aggregate or sole:

“ The Mayor's Court,” or “ the court.”

The words “the Mayor's Court,” or “the court,” shall mean the Court of our Lady the Queen, holden before the Lord Mayor and Aldermen in the Chamber of the Guildhall of the City of London :

The words "the Judge" shall mean the Judge of the "The Judge." Mayor's Court or the person authorized to sit or sitting as Judge therein :

The words "the superior courts" shall mean her Majesty's "Superior court." superior courts of common law at Westminster :

The words "the Registrar" shall mean the Registrar of "The Registrar." the Mayor's Court, and shall include the deputy of such Registrar, or the person appointed to perform or performing the duties of Registrar.

LV. The costs of and relating to the passing of this Act Expenses of Act, shall be paid out of the fees of the court. &c.

SCHEDULES

REFERRED TO BY THE FOREGOING ACT.

SCHEDULE (A.)

To the Judges of the Mayor's Court of the City of London.

Be pleased to summon
of

to answer touching the Debt due to
by the of

Debt, £ the Court of Mayor and Aldermen of the said City, on
Costs . behalf.

_____ Dated this day of in the
£ year of our Lord One thousand eight hundred and

of
in the of

* Judgment
signed or Order day of
dated. eight hundred and

the*
One thousand }
}

Attorney for the said

SCHEDULE (B)

In the Mayor's Court, London.

You are hereby required to appear before the Court of our
 Lady the Queen, holden before the Mayor and Aldermen of
 the City of London, at the Guildhall of the said City, on
 the day
 of at of the clock in the
 Forenoon of the same day, precisely, touching the not having
 paid to
 Debt, £ of
 Costs of in
 _____ the of the Sum
 £ of
 _____ recovered in a certain of the said Court

Dated this day of in the year of our
 Lord One thousand eight hundred and

By Order of the Court:

To
 of
 in the City of London. }
 (or County of)

SCHEDULE (C.)

In the Mayor's Court, London.

At a Court, holden the day of in the
year of our Lord One thousand eight hundred and

Debt, £	WHEREAS	at the
Costs .	time of the granting the Summons hereinafter mentioned,	
_____	was and now is indebted to	
£	in the Sum of	pounds shillings
_____	and	pence, and no more, besides Costs of suit,
	amounting to	pounds shillings
	and	pence, by virtue of a
	Court, on the	day of in the year
	of our Lord One thousand eight hundred and	:
	And whereas the said	to
	enforce the payment of such Debt, did, on the	
	day of	in this present year, obtain a
	Summons from this Court; by which Summons the said	
	was required to appear before this	
	Court, at the Guildhall aforesaid, this day: And whereas, the	
	said	hath been duly served with
	the said Summons, but he hath not attended as required by	
	the said Summons, and hath not alleged a sufficient excuse	
	for not attending:	

Now IT IS ORDERED, that the said
shall be committed for the term of days to the
Debtors' Prison for the City of London.

By THE COURT,

To
one of the Serjeants-at-Mace of this Court, }
his Deputy, and to the Keeper of the }
Debtors' Prison (above mentioned) for the }
City of London.

In the Mayor's Court, London.

At a COURT, holden the day of in the
year of our Lord One thousand eight hundred and

Debt, £	WHEREAS	now is
Costs .	indebted to	in the Sum
_____	of pounds shillings and	
£	pence, and no more, besides Costs of suit amounting to	
_____	pounds shillings and	
	pence, by virtue of a of this Court, on the	
	day of in the year of our Lord	
	One thousand eight hundred and : And whereas	
	the said to enforce the payment of such	
	Debt, did, on the day of in this	
	present year, obtain a Summons from this Court; by which	
	Summons the said	
	was required to appear before this Court, at the Guildhall	
	aforsaid, this day: And whereas the said	
	hath been duly served with the said Summons, and hath	
	attended as required by the said Summons: And whereas the	
	said appears to have [the means of	
	paying such Debt, but hath not paid the same at such times	
* or has refused to disclose his property [or as the case may be]:	as this Court hath heretofore ordered] :* Now IT IS ORDERED, that the said	
	shall be committed for the term of days to the	
	Debtors' Prison of the City of London.	

BY THE COURT,

To

one of the Serjeants-at-Mace of this Court,
his Deputy, and to the Keeper of the
Debtors' Prison (above mentioned) for the
City of London. }

SCHEDULE (D.)

In the Mayor's Court, London.

against

Sir,

TAKE NOTICE, that I shall attend at the office of the Court,
situate
on
at o'clock, to sign Judgment against you herein. And further take
Notice, I shall at the same time apply for an Order for the payment by
you of the said Debt by Instalments, or such other Order as the Court may
think fit to make herein.

Yours, &c.

Plaintiff's Attorney.

To Mr.

the above-named Defendant.

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